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THE HANCOCK NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

JONATHAN F. FARRAR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE.

[redacted]

(16,900.)

(16,900.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 315.

THE HANCOCK NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

JONATHAN W. FARNUM.

IN ERROR TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 2, 1898.

1 UNITED STATES OF AMERICA, *ss.*:

[Seal of Circuit Court, Rhode Island.]

The President of the United States to the honorable the judges of the supreme court of the State of Rhode Island, holden at Providence, within and for the county of Providence, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the State of Rhode Island in which a decision could be had, in the suit between The Hancock National Bank, a banking association, to wit, a corporation duly organized and existing under the laws of the United States of America, and having its usual place of business at Boston, in the county of Suffolk and Commonwealth of Massachusetts, plaintiff, and Jonathan W. Farnum, of Woonsocket, in the county of Providence and said State of Rhode Island, defendant, in an action on the case, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Hancock national bank, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 15th day of June next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the sixteenth day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

WILLIAM P. CROSS,
Clerk of the Circuit Court of the United States for the District of Rhode Island.

Allowed.
CHARLES MATTESON,
Chief Justice of the Supreme Court of the State of Rhode Island, &c.

2 [Endorsed:] Hancock National Bank, pl'ff in error, *vs.* Jonathan B. Farnum, def't in error. Writ of error. Supreme court, com. pleas div., May 16, 1898. Geo. E. Webster, clerk.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

Supreme Court, Common Pleas Division.

And now, here, the justices of the supreme court, sitting in the common pleas division of the supreme court within and for said county of Providence, make return of this writ by annexing hereto and sending herewith, under the seal of said division, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, George E. Webster, clerk of said common pleas division within and for said county, have hereto set my hand and affixed the seal of said division of said court this twenty-seventh day of May, A. D. one thousand eight hundred and ninety-eight.

{ Seal Supreme Court, Providence County, Common Pleas Division, State of Rhode Island and Providence Plantations. }

GEO. E. WEBSTER, *Clerk.*

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Jonathan B. Farnum, of Woonsocket, in the county of Providence, in the State of Rhode Island, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fifteenth day of June next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Rhode Island, wherein The Hancock National Bank of Boston, in the county of Suffolk and Commonwealth of Massachusetts, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles Matteson, chief justice of the said supreme court, this 18th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

CHARLES MATTESON,
Chief Justice of the Supreme Court.

Due and sufficient service of the above citation is hereby acknowledged this nineteenth day of May, A. D. 1898.

JONATHAN B. FARNUM,
By EDWARDS & ANGELL, *Att'ys.*

4 [Endorsed:] Hancock National Bank, pl'ff in error, *vs.* Jonathan B. Farnum, def't in error. Citation of writ of error. Supreme court, com. pleas div, May 19, 1898. Geo. E. Webster, clerk.

5 (Copy.)

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

To the sheriffs of our several counties or to their deputies, Greeting:

[L. S.] We command you to attach the goods and chattels and real estate of Jonathan B. Farnum, alias John Doe, of Woonsocket, in said county, and them in safe custody keep, to the value of two thousand dollars; and to summon the said Jonathan B. Farnum to answer the complaint of Hancock national bank, a corporation legally created under the laws of the United States of America, having offices and doing business in Boston, in the Commonwealth of Massachusetts, on the return day hereof (said return day being the eight- day of January, A. D. 1897), in the common pleas division of the supreme court, to be holden at the court-house, in Providence, within and for our county of Providence, in an action of the case in assumpsit, as by declaration to be filed in court will be fully set forth, to the damage of the plaintiff, as it says, two thousand dollars.

Hereof fail not and make true return of this writ, with your doings thereon.

Witness the Honorable Charles Matteson, chief justice of our supreme court, at Providence, this 7th day of December, in the year 1896.

(S'g'd) GEO. E. WEBSTER, *Clerk.*

6 I, William J. Cronin, attorney for plaintiff named in the within writ, make affidavit and say that plaintiff has a just claim against the defendant named in said writ that is due, upon which it expects to recover in said action a sum sufficient to give jurisdiction to the court to which said writ is returnable.

(S'g'd) WILLIAM J. CRONIN.

Subscribed and sworn to, in Providence, in the county of Providence, the 7th day of December, A. D. 1896, before me—

(S'g'd) EDWARD C. STINESS,
Notary Public.

7 (*Officer's Return.*)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

In the city of Woonsocket, in said county, on this 10th day of December, A. D. 1896, at 10 o'clock and 35 minutes a. m., I have made service of the within writ by attaching all the right, title, and

interest of the within-named defendant in and to *a* certain lots of and parcels of land and the buildings and improvements thereon, situated in the city of Woonsocket, bounded and described as follows, on the northwesterly side of South Main street, in said Woonsocket, and is bounded as follows: Beginning at the most easterly corner of said lot, at a point in the northwesterly line of South Main street, a corner of land formerly of the heirs of Peletiah Metcalf, thence southwesterly, on the northwesterly line of said street, ninety-one (91) feet to the most easterly corner of land of Florence E. Seagrove; thence northwesterly, at right angles with said street, (118 and $\frac{45}{100}$) feet with said Seagrove land to said Metcalf land; thence northwesterly with said Metcalf land (88 and $\frac{25}{100}$) feet to a stone bound; thence southeasterly with said Metcalf land (120 and $\frac{5}{100}$) feet in a straight line to the point of beginning, and recorded in Book No. 39, at page 371, in the records of land evidence of said city of Woonsocket, reference thereto being had; also one other lot of land *of land* situated in said city of Woonsocket and described as follows: Beginning at a point (120) feet westerly from South Main street, said point being the northerly corner of land late *late* of George B. Arnold, deceased, thence northwesterly (130) feet to a stone bound; thence at right angles southerly and (250) feet
8 distance from and on a line parallel with South Main street (85 and $\frac{4}{100}$) feet; then easterly at right angles to the last-mentioned line (131 and $\frac{50}{100}$) feet to the westerly corner of the said George B. Arnold land; thence westerly by and with the westerly line of said Arnold land (88 and $\frac{35}{100}$) feet to the point of beginning. Said land is recorded in the records of land evidence of the city of Woonsocket, at the recorder's office, in said Woonsocket, in Deed Book 39, at page 373, reference thereto being had, and have left an attested copy of this writ, with my doings endorsed thereon, with the recorder of deeds of the city of Woonsocket, and I have paid him his lawful fee for filing the same, to wit, 25 cents.

And have, at said Woonsocket, on this 10th day of December, A. D. 1896, left an attested copy of the within writ, with an endorsement thereon of a general reference to the real estate attached thereby, together with a statement of the date and time of day of such attachment, with the defendant, in his hands and possession.

(S'g'd) JOHN F. RABBITT,
Deputy Sheriff.

9 [Endorsed:] Writ of attachment. Hancock National Bank *vs.* Jonathan B. Farnum. (S'g'd) William J. Cronin, John E. Conley, pl'ff's att'y-. Supreme court, common pleas division. George E. Webster, clerk.

10 (*Declaration.*)

STATE OF RHODE ISLAND, *Providence,* } *sc:*

Supreme Court, Common Pleas Division.

HANCOCK NATIONAL BANK
vs.
JONATHAN B. FARNUM.

Plaintiff's declaration.

The Hancock National Bank of Boston (formerly known by the name of the Traders' National Bank of Boston, the change of name being by virtue of an act of the Congress of the United States), a corporation legally created under the laws of the United States of America, having offices and doing business in Boston, in the Commonwealth of Massachusetts, complains of Jonathan B. Farnum, of Woonsocket, in the State of Rhode Island, attached and summoned by the sheriff in an action of the case in assumpsit;

For that the plaintiff says that it is a creditor of the Commonwealth Loan and Trust Company, a corporation duly organized and existing under the laws of the State of Kansas; that by the consideration of the justices of the circuit court of the United States of America for the district of Kansas, at a term holden at Topeka, in said Kansas, on the eighth day of December, A. D. 1893, to wit, on the said eighth day of December, it recovered judgment against said corporation for the sum of $16,136.76, debt or damages, and $28.45, costs of suit; and thereafter, of the twenty-seventh day of April, A. D. 1894, execution issued against said corporation for $16,136.76 and said costs on said judgment; that after due search and diligence no property of said corporation could be found to be taken in satisfaction of said execution, and the same was returned to the plaintiff wholly unsatisfied.

11 And said corporation is not a railway or a religious or charitable corporation.

And the plaintiff says that the said defendant is a stockholder in said corporation, now owning and holding ten shares of the capital stock of said corporation of a par value of $100 each, and appearing as said stockholder upon the books of said corporation, whereby he is conclusively presumed to be a stockholder of said corporation within the meaning and liability of the General Statutes of the State of Kansas of 1889, paragraph 1192, a copy of which is hereto annexed and made a part hereof as Exhibit A, according to the interpretation of said paragraph in the supreme court of the State of Kansas, which is the highest court of said State.

And the plaintiff says that said defendant owes it the sum of $1,000 under and by virtue of his liability as a stockholder of said corporation, as set forth in said paragraph 1192, and also as set forth

in section 2, article 12, of the constitution of said State of Kansas, a copy of which is hereto annexed and made a part hereof as Exhibit B, which liability is a contractual liability and arises upon the contract of subscription to the capital stock of said corporation, made by said defendant in becoming a stockholder, as aforesaid, and that said defendant, in subscribing to said stock and becoming a stockholder, thereby guaranteed payment to the creditors of said corporation of an amount of the debt of said corporation equal to the par value of the stock held and owned by him, which should be payable to the judgment creditors of said corporation who first pursued their remedy under said paragraph 1192 against said defendant until the amount as guaranteed has been paid by him, and that said liability is several, and an action to enforce said liability is transitory and may be brought in any court of general
12 jurisdiction in the State where personal service can be made upon the stockholder, according to the interpretation of said liability under said paragraph by the decisions of said supreme court of the State of Kansas.

And the plaintiff begs leave to refer to the decisions cited in the schedule hereto annexed and made a part hereof as Exhibit C in proof of its allegations of the judicial interpretation of said paragraph 1192 and said article 12, section 2, by the supreme court of the State of Kansas.

And the plaintiff avers that it has recovered no judgment and brought no action under said paragraph 1192 or otherwise which, if prosecuted to final judgment and satisfaction thereof, will wholly satisfy said execution against said corporation or reduce the amount unsatisfied on said execution below one thousand dollars, and that it seeks to recover said amount, $1,000, against said defendant, being an amount equal to the par value of the stock held and owned by said defendant in said corporation.

And the plaintiff further avers that the said statute of the State of Kansas, as construed in the highest court of said State, as set forth, impose a liability upon said defendant to the plaintiff, as above set forth, and that full faith and credit should be given in this State and the courts thereof to said public acts, records, and judicial proceedings of said State of Kansas and to the judicial construction of such laws, acts, and records by the supreme court of said Kansas, which is the highest court of said State, as required by article 4, section 1, of the Constitution of the United States, and by section 905 of the Revised Statutes of the United States.

To the damage of the plaintiff two thousand dollars, as laid in its writ, dated December 7th, 1896.

13 Wherefore it sues by its attorneys,

(S'g'd) WILLIAM J. CRONIN.
JOHN E. CONLEY.

EXHIBIT "A."

General Statutes of Kansas, 1889.

Chapter 23, article 4, paragraph 1192.

"If any execution shall have been issued against the property or effects of a corporation, except a railway or religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then execution may be issued against any of the stockholders, to an extent equal in amount to the amount of the stock by him or her owned, together with any amount unpaid thereon; but no execution shall issue against any stockholder, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted made upon motion in open court, after reasonable notice in writing to the person or persons sought to be charged and upon such motion such court may order execution to issue accordingly; or the plaintiff in the execution may proceed by action to charge the stockholders with the amount of his judgment."

EXHIBIT "B."

Section 2, article 12, of the constitution of Kansas.

"Dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder; and such other means shall be provided by law; but such individual liability shall not apply to rail-
14 road corporations nor corporations for religious or charitable purposes.

EXHIBIT "C."

Said stockholders' liability under paragraph 1192 is several.
Howell *vs.* Bank, 52 Kansas, 133.
Abbey *vs.* Dry Goods Company, 44 Kansas, 415.
Bank *vs.* Magnuson, 52 Kansas, 575.

Stockholders, according to the books, are liable.
Plum *vs.* Bank, 48 Kansas, 484.
Bemark *vs.* Barows, 52 Kansas, 779.

The liability is in contract.
Howell *vs.* Manglesdorf, 33 Kansas, 194.
Abbey *vs.* Long, *supra.*
Plum *vs.* Bank, *supra.*
Achenbach *vs.* Pomeroy Coal Co., 42 Pac. Rep., 734.

15 (*Demurrer.*)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

HANCOCK NATIONAL BANK
v.
JONATHAN B. FARNUM.

Demurrer.

The defendant demurs to the plaintiff's declaration, and for grounds of demurrer says:

1. The declaration does not set out the statutes of the State of Kansas under which it is claimed that the defendant is liable.

2. The cause of action set out in the declaration arises upon liabilities created by the statutes of the State of Kansas, which will not be enforced by this court.

3. The declaration is insufficient and informal in other respects, which the defendant prays he may be allowed to assign at the hearing.

JONATHAN B. FARNUM,
(S'g'd) By his attorney-, EDWARDS & ANGELL.

16 (*Pleas.*)

PROVIDENCE, *sc:*

Supreme Court, Common Pleas Division.

HANCOCK N. BK.
v.
JONATHAN B. FARNUM.

Pleas.

The defendant, his demurrer being overruled, says:

1. He did not promise in manner and form in the declaration alleged.

2. He does not own the stock in the Commonwealth Loan & Trust Co., as alleged in the declaration, but holds the same as collateral to secure a debt due to him from one —— ——.

(S'g'd) By his attorneys, EDWARDS & ANGELL.

The defendant claims a jury trial.

(S'g'd) By his attorneys, EDWARDS & ANGELL.

17 (*Opinion.*)

HANCOCK NATIONAL BANK
v.
JONATHAN B. FARNUM.

Opinion.

STINESS, *J.:*

The declaration sets out that the plaintiff is a creditor of the Commonwealth Loan and Trust Company, a corporation under the laws of Kansas, upon a judgment of the U. S. district court for the district of Kansas; that execution issued on said judgment, which has been returned unsatisfied; that the defendant holds ten shares of the stock of said company of the par value of one hundred dollars each; that he owes the plaintiff the sum of one thousand dollars under the laws of Kansas, which provide that execution for an amount equal to his stock may issue against a stockholder, when property of the corporation cannot be found whereon to levy an execution against the corporation, or that the plaintiff may proceed by action to charge the stockholder; that by the constitution of Kansas and by decisions of its supreme court the liability of the stockholder is contractual, several and transitory, and that having been so decided under the provisions of the Constitution of the United States, an action on such liability may be had in his State. Art. 12, § 2, of the constitution of Kansas; art. IV, chap. 23, par. 1192, of the Kansas Statutes, and the decisions of the supreme court of Kansas in Howell *v.* Manglesdorf, 33 Kan., 194; Abbey *v.* Dry Goods Co., 44 Kan., 415, and Wells *v.* Robb, 43 Kan., 201, are made a part of the declaration.

The defendant demurs to the declaration.

18 The plaintiff does not claim that a purely statutory liability in one State is a cause of action in another State, but that when it is of a contractual nature or of a kind adapted to the *lex fori* it is a cause of action. Accordingly it seeks to bring this case within the contractual class, and its proposition is this:

The law is construed in Kansas to constitute a contract; full faith and credit must be given to this construction as a judicial proceeding in other States; hence the plaintiff is entitled to enforce in this State the liability of a stockholder in a Kansas corporation, as on a contract.

The argument is pressed with ability and plausibility, but we are not able to see that it is applicable to this case. The declaration does not aver that the defendant has made a contract, nor that the law under which the corporation exists has made him a contracting party, but that an opinion of the supreme court of Kansas says that the relation between a stockholder and a corporation creditor is that of a contract.

The provision of the Federal Constitution relates to statutes, judgments, and decrees. These are the things which are to have full faith and credit in the several States. Opinions of courts are

not judgments, and although a court, in the interpretation of the statutes of its own State, will be followed by other courts, there is no rule of comity or law that a court should be followed when its opinion is given simply upon its interpretation of general legal principles. Still less would an opinion be binding when it is not a decision, but merely a dictum. It does not appear to us that the opinion of the supreme court of Kansas, which is relied on in this case on the matter of contract, was, as to that question, anything more than a dictum. Howell *v.* Manglesdorf is the leading case. But the
19 question to be decided was whether execution could be ordered against a non-resident stockholder upon a notice served outside of the State, and the court said that it could not. Incidentally the court said that the liability was statutory and in the nature of a guaranty; but this was not a question in the case, nor was the statement one which applied to any interpretation of the statute involved in the question at issue; it was only a remark upon the general nature of the liability, in connection with the statement that it was independent of that of the company, and at the close of the opinion the dictum is added that an action may be brought in any State where service can be made. Abbey *v.* Dry Goods Co., 44 Kan., 415, and Howell *v.* National Bank, 52 Kan., 133, simply decided that stockholders must be sued separately. Plum *v.* Bank, 48 Kan., 484, and Van Demark *v.* Barons, 52 Kan., 779, decided that stock must be transferred on the books of the bank. None of these cases decide that a contract arises under the statute, and even if it did it would be a decision on general legal principles and not an interpretation of the statute itself. Assuming, however, that the opinion of the supreme court of Kansas is that the relation of a stockholder to creditors is contractual it is not a binding opinion upon us; it is not a judgment to which full faith and credit must be given under the Federal Constitution, and, giving to it the high respect which is due to the court from which it comes, it still falls short of establishing, as a matter of pleading in this declaration, the fact of a contract by the defendant in Kansas by virtue of the statute. The clause of the constitution of Kansas cited in the declaration does not create, or purport to create, the liability. It is not a self-executing provision, but one which implies that legislation is necessary to carry it into effect. Marshall *v.* Sherman, 148
20 N. Y., 9. The supreme judicial court of Massachusetts overruled a demurrer to a similar declaration in Hancock Bank *vs.* Ellis, 166 Mass., 414, but it did so upon the ground that the declaration set out that the defendant, according to the law of Kansas, was liable to a judgment creditor of a corporation as upon a contract which is suable anywhere. It does not appear that the court made any examination of the law in Kansas, nor that the decisions upon which the contractual liability is supposed to rest were made a part of the declaration. The declaration averred a judicial interpretation, that the law declared the liability to be contract; and, being so set out, the court said that the declaration stated a case, thus achieving, in the apt words of the defendant's counsel in this case, "a temporary triumph of mendacious pleading."

From this examination we think it sufficiently appears that the declaration states no case of a contract under the decisions of the supreme court of Kansas or the constitution of the State.

We come, then, to the question whether we can construe the statute of Kansas to create a contractual relation. However much the provisions which make a stockholder liable for debts of a corporation may differ in the several States, they are essentially the same in principle. They declare a liability and provide for its enforcement. In this respect the statute of Kansas is like our statute, which makes stockholders of manufacturing corporations liable for corporate debts until the capital stock is paid in and a certificate filed. In Sayles *v.* Bates, 15 R. I., 342, this court decided that the liability was statutory and not contractual, and so held a married woman to be liable as a stockholder. Certainly the ordinary elements of a contract are wanting. The minds of the stock-
21 holder and corporation creditor have not met upon the subject-matter of the original debt; no credit has been given to the stockholder directly; he has not directly received the consideration, nor has he made a promise, express or implied. There is nothing between them which at common law would be regarded as a contract; but the statute imposes a liability upon grounds of equity and public policy. The cases which hold that the liability is contractual do so either upon the theory that in subscribing to the stock the stockholder has assumed the liability as a contract, or that by reason of his relation to the corporation he has become a guarantor of its debts. See Flash *v.* Conn, 109 U. S., 371; Ferguson *v.* Sherman, 47 Pac. Rep., 1023 (Cal.); Paine *v.* Stewart, 30 Conn., 516, as to the subscription, and Howell *v.* Manglesdorf, *supra*, as to the guaranty. It is impossible to refer to all the cases, and these are sufficient as examples.

We are aware that the greater number of cases call the liability a contract, and undoubtedly the relation of a stockholder to a corporation has certain equitable features both of a contract and a guaranty, but we think it much more accurate to say that the liability is a statutory liability simply, incidental to the ownership of stock, than to say that it is a contract. In Rice *v.* Hosiery Co., 56 N. H., 114, the court says: "The liability which the plaintiff seeks to enforce is a mere creature of the statute, having none of the elements of a contract, whether express or implied; it is a naked statutory liability, entirely unknown to the common law, for the indebtedness of the corporation, however it may accrue, whether for the breach of a contract or the commission of a tort. The stockholder is not liable upon the contract in one case, nor for the tort in the other, but, under the statute, for the debt against the corporation which may grow out of either."

22 As this view is so clearly founded in reason, and as this court has already decided, in Sayles *v.* Bates, *supra*, that the liability is not a contract, we do not feel called upon to change that decision, even though the majority of courts may hold the other way.

It follows, therefore, that the declaration does not state a contract

under the law of Kansas, as construed by the decisions of the supreme court of that State to which we have been referred, nor by our construction of it.

But a statutory liability may sometimes be prosecuted in another State, and the question comes whether the liability here set out can be so prosecuted. The rule adopted by this court in O'Reilly *v.* N. Y. R. R. Co., 16 R. I., 388, is that a right of action created by statute in one State may be prosecuted in another when the two States have statutes relating to the subject which are substantially similar.

We do not think that the declaration before us states a case within this rule.

Under Gen. Laws R. I., cap. 178, § 9, stockholders of a bank are made liable for its debts, and under cap. 180 liabilities are imposed upon stockholders of manufacturing corporations; but the declaration does not aver that the Commonwealth Loan and Trust Company was either of these. If not, this action seeks to enforce a liability against a stockholder which is not enforceable under our laws. The statutes of a State do not operate beyond its own limits, and comity between States does not require that one State should enforce the statutory provisions of another State which are contrary to the policy of its own laws. New Haven *v.* Linden, 142 Mass., 349; Fowler *v.* Lamson, 146 Ill., 472; Bank *v.* Rindge, 154 Mass., 203; Lewis *v.* Woodfolk, 49 Tenn., 26.

23 A recent case *contra* is Guerney *v.* Moore, 32 S. W. Rep., 1132.

Our conclusion is that the demurrer must be sustained.

I certify that the foregoing is a true copy of the original opinion of the appellate division of the supreme court of the State of Rhode Island and Providence Plantations, holden at Providence, within the county of Providence, filed on the 14th day of April, A. D. 1898, in the action entitled Hancock National Bank *vs.* Jonathan B. Farnum.

[L. S.] (S'g'd) BERTRAM S. BLAISDELL,
Clerk of the Appellate Division of the Supreme Court in Providence.

24 (*Petition for Writ of Error.*)

STATE OF RHODE ISLAND, *Providence*, } ss:

Supreme Court. Law.

HANCOCK NATIONAL BANK, a Banking Association, to wit, a Corporation Duly Organized and Existing under the Laws of the United States of America and Having Its Usual Place of Business in Boston, in the County of Suffolk and Commonwealth of Massachusetts, Plaintiff in Error,

vs.

JONATHAN W. FARNUM, of Woonsocket, in the County of Providence, in said State of Rhode Island, Defendant in Error.

To the honorable the judges of the supreme court of the State of Rhode Island, holden at Providence, within and for said county of Providence:

And now comes The Hancock National Bank, a banking association, to wit, a corporation duly organized and existing under the laws of the United States of America and having its usual place of business at Boston, in the county of Suffolk and Commonwealth of Massachusetts, and says that manifest error hath happened, to the great damage of your petitioner, in the record and proceedings, and also in the rendition of a judgment in a suit between said bank, plaintiff, and Jonathan W. Farnum, of Woonsocket, in the
25 county of Providence and said State of Rhode Island, defendant, in the supreme court of said State, holden at Providence, within and for said county of Providence, being the highest court of law of said State of Rhode Island in which the decision could be had in said suit, and in which said court a final judgment was rendered against said Hancock national bank on the 19th day of April, A. D. 1898, in said suit, wherein was drawn in question the construction of the Constitution of the United States and of a statute of the United States and the decision was against the title, right, privilege, and exemption specially set up and claimed by said Hancock national bank under said Constitution and said statute, and wherein was further drawn in question the faith and credit to be given by said court to paragraph 1192 of the General Statutes of the State of Kansas for 1889, and to section 2, article 12, of the constitution of the State of Kansas, and of the judicial construction thereof by the highest courts of said State of Kansas, and the decision was against giving full faith and credit to the said statute and constitution and judicial construction thereof of the State of Kansas; all of which appears in the records and proceedings in said suit.

Wherefore your petitioner prays for a writ of error in said suit, to issue in due form of law, of the Supreme Court of the United States, to the end that such error shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf.

And your petitioner files herewith an assignment of errors, which sets out separately and particularly each error asserted and intended to be urged.

And your petitioner further offers a supersedias bond, in such sum and with such due and sufficient security as may be approved by the justices of this honorable court, that said Hancock na-
26 tional bank will prosecute its writ of error to effect and answer all damages and costs if it shall fail to make its plea good.

HANCOCK NATIONAL BANK,
By H. J. JAQUITH.
(S'g'd) W. R. BIGELOW.
WM. J. CRONIN.
JOHN E. CONLEY.

27 (*Assignment of Errors by Plaintiff in Error.*)

UNITED STATES OF AMERICA:

Supreme Court of the United States.

HANCOCK NATIONAL BANK, a Banking Association, to wit, a Corporation Duly Organized and Existing under the Laws of the United States of America and Having its Usual Place of Business in Boston, in the County of Suffolk and Commonwealth of Massachusetts, Plaintiff in Error,

vs.

JONATHAN W. FARNUM, of Woonsocket, in the County of Providence, in said State of Rhode Island, Defendant in Error.

Assignment of errors by plaintiff in error.

Now comes said Hancock National Bank, the plaintiff in error, and says that in the record and proceedings in the above-entitled suit there is a manifest error in this, to wit:

1. That in said suit there was drawn in question the construction of a statute of the United States, to wit, section 905 of the Revised Statutes of the United States, and the decision was against the title right, privilege, and immunity of the plaintiff in error specially set up and claimed under such statutes, to wit, said section 905 of the Revised Statutes of the United States.

2. That in said suit there was brought in question the Constitution of the United States, to wit, article 4, section 1, of the Constitution of the United States, and the decision was against the
28 title, right, privilege, and immunity of the plaintiff in error specially set up and claimed under the Constitution, to wit, said article 4, section 1, of the Constitution of the United States.

3. That the State court of Rhode Island decided, against the contention of the plaintiff in error, that it would not give full faith and credit to paragraph 1192 of the General Statutes of the State of Kansas, and to the judicial construction thereof by the highest

courts of said State, as required by article 4, section 1, of the Constitution of the United States, and by section 905 of the Revised Statutes of the United States, although their attention was drawn thereto, and thereby defeated the right of the plaintiff in error to enforce by appropriate action its claim against the said Farnum, as aforesaid.

4. That the supreme court of Rhode Island decided, against the contention of the plaintiff in error, that it would not give full faith and credit to the judicial proceedings of the circuit court of the United States of America for the district of Kansas, as set forth in the pleadings, as required by article 4, section 1, of the Constitution of the United States, and by section 905 of the Revised Statutes of the United States, although their attention was drawn thereto, and thereby defeated the right of the plaintiff in error to enforce by appropriate action its claim against said Farnum, as aforesaid.

5. The supreme court of the State of Rhode Island erred in the decision rendered in this case in failing to give full faith and credit to the laws and constitution of the State of Kansas which were presented in the pleadings, in failing to give full faith and credit to the judicial construction of such laws by the highest court of the State of Kansas, and in failing to give full faith and credit to the judicial proceedings of the circuit court of the United States
29 of America for the district of Kansas, as set forth in the pleadings.

Wherefore the said Hancock National Bank prays that the judgment of the supreme court of the State of Rhode Island, holden at Providence, within and for said State of Rhode Island, be reversed, and that the said Supreme Court of the United States may cause further to be done to correct said error what of right and according to the laws and custom of the United States should be done.

HANCOCK NATIONAL BANK,
By H. J. JAQUITH.
(S'g'd) W. R. BIGELOW.
WM. J. CRONIN.
JOHN E. CONLEY.

30 (*Bond.*)

Know all men by these presents that we, the Hancock National Bank, a banking association, to wit, a corporation organized and existing under the laws of the United States of America and having its usual place of business at Boston, in the county of Suffolk and Commonwealth of Massachusetts, as principal, and Nathan W. Littlefield, of the city of Pawtucket, in the county of Providence and State of Rhode Island, as surety, are held and firmly bound unto Jonathan W. Farnum, of Woonsocket, in the county of Providence and State of Rhode Island, in the full and just sum of two hundred and fifty dollars, to be paid to the said Jonathan W. Farnum, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves,

our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seal and dated the 14th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, on the 19th day of April now last past, in the supreme court of the State of Rhode Island, holden at Providence, within and for said county of Providence, in a suit pending in said court between said Hancock National Bank, plaintiff, and said Jonathan W. Farnum, defendant, a final judgment was rendered against said Hancock National Bank, and said Hancock National Bank having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Jonathan W.
Farnum, citing and admonishing him, the said Farnum, to
31 be and appear at a Supreme Court of the United States, to be holden at Washington on the — day of —— next:

Now, the condition of the above obligation is such that if the said Hancock National Bank shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

[L. S.] HANCOCK NATIONAL BANK,
(S'g'd) By DENMAN BLANCHARD, *Cashier.*
(S'g'd) NATHAN W. LITTLEFIELD.

Surety satisfactory.
(S'g'd) EDWARDS & ANGELL,
Att'ys for Def't in Error.

Approved:
(S'g'd) CHARLES MATTESON,
Chief Justice of the Supreme Court of the State of Rhode Island, &c.

32 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

Supreme Court, Common Pleas Division, September Session, A. D. 1897.

HANCOCK NATIONAL BANK *vs.* JONATHAN G. FARNUM. } No. 4861.

Said case was duly entered in this division at its September session, A. D. 1896, to wit, on January 8th, A. D. 1897; and thereupon said defendant demurred, and in case of the overruling of said demurrer, made answer; and, issue being joined on said demurrer, said case was, by order of the court—Rogers, J.—certified to the appellate division of said supreme court within and for said county of Providence upon said defendant's substantial demurrer to said

declaration; and now, at this present September session, A. D. 1897, of this said common pleas division of said supreme court within and for said county of Providence, to wit, on April 14th, A. D. 1898, said defendant's demurrer to said declaration is sustained by said appellate division and said case remitted to this said common pleas division for further proceedings; and thereupon, to wit, on April 19th, A. D. 1898, said plaintiff corporation thereupon makes submission. It is therefore, to wit, on April 26th as of 19th, A. D. 1898, considered by the court that said defendant recover and have of said plaintiff corporation his costs of defence, taxed at $—; and thereupon, to wit, on May 16th, A. D. 1898, said plaintiff corporation's petition for a writ of error is filed and granted and its bond is filed and approved by the Honorable Charles Matte-
33 son, chief justice of the supreme court of the State of Rhode Island and Providence Plantations; and thereupon, to wit, on May 18th, A. D. 1898, a citation is issued by said Matteson, C. J., to said defendant, Jonathan B. Farnum, citing him to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fifteenth day of June, A. D. 1898, pursuant to said writ of error; and thereupon, to wit, on this 27th day of May, A. D. 1898, said writ of error is returned to said Supreme Court of the United States, with a certified copy of the record and proceedings in said case annexed.

Attest:

(S'g'd) GEO. E. WEBSTER, *Clerk.*

34 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, *Providence,* } *sc:*

Supreme Court, Common Pleas Division, Clerk's Office, May 27th, A. D. 1898.

HANCOCK NATIONAL BANK *vs.* JONATHAN B. FARNUM. } No. 4861.

I, George E. Webster, clerk of said common pleas division of the supreme court within and for said county of Providence, do hereby certify the aforegoing to be a true copy of the record and proceedings in the above-entitled cause now remaining in said division of the supreme court, together with a true copy of the opinion upon demurrer in said cause of the appellate division of said supreme court within and for said county of Providence, as certified by the clerk of said appellate division, a copy thereof being now on file in this said common pleas division, in which said cause judgment is rendered at this present September session, A. D. 1897, of this said common pleas division.

Seal Supreme Court, Providence County, Common Pleas Division, State of Rhode Island and Providence Plantations.

Witness my hand and the seal of said common pleas division, at the city of Providence, in said county of Providence, this twenty-seventh day of May, A. D. one thousand eight hundred and ninety-eight.

GEO. E. WEBSTER, *Clerk.*

35 [Endorsed:] Certified copy of record and proceedings and opinion in case Hancock National Bank *vs.* Jonathan B. Farnum. No. 4861. September session, A. D. 1897, common pleas division of supreme court, county of Providence, State of Rhode Island and Providence Plantations. (Copy, $10.00.) Boston, Mass., Jun- 7, 189–. Registry div.

Endorsed on cover: Case No. 16,900. Rhode Island supreme court. Term No., 315. The Hancock National Bank, plaintiff in error, *vs.* Jonathan W. Farnum. Filed June 9, 1898.

Supreme Court of the United States.

No. 89. OCTOBER TERM, 1899.

THE HANCOCK NATIONAL BANK, PLAINTIFF IN ERROR.

v.

JONATHAN W. FARNUM.

BRIEF OF PLAINTIFF IN ERROR.

THIS case comes to this court on a writ of error to the Supreme Court of the State of Rhode Island. That court sustained the demurrer of the defendant in error to the declaration of the plaintiff in error.

STATEMENT OF THE CASE.

The declaration sets out the following facts: The plaintiff is a creditor of the Commonwealth Loan and Trust Company; the Commonwealth Loan and Trust Company is a corporation duly organized under the laws of the State of Kansas and is not a railway, religious or charitable corporation; the defendant is a stockholder in that corporation; the plaintiff obtained judgment against the Commonwealth Loan and Trust Company in the Circuit Court of the United States for the District of Kansas on the eighth day of December, A.D. 1893, for $16,136.76, and execution issued thereafter on the twenty-seventh day of April, A.D. 1894, and was duly returned wholly unsatisfied.

The declaration also sets out, Article XII., section 2, of the Constitution of the State of Kansas as follows: "Dues from corporations shall be secured by individual liability of the

stockholders to an additional amount equal to the stock owned by each stockholder; and such other means as shall be provided by law; and such individual liability shall not apply to railroad corporations nor corporations for religious or charitable purposes."

It also sets out paragraph 1192 of the General Statutes of Kansas of 1889 as follows: "If any execution shall have been issued against the property or effects of a corporation (except a railway or a religious or charitable corporation), and there cannot be found any property whereon to levy such execution, then execution may be issued against any of the stockholders, to an extent equal in amount to the amount of the stock by him or her owned, together with any amount unpaid thereon; but no execution shall issue against any stockholder, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court, after reasonable notice in writing to the person or persons sought to be charged; and, upon such motion, such court may order execution to issue accordingly; or the plaintiff in the execution may proceed by action to charge the stockholders with the amount of his judgment."

The declaration further sets out that the stockholder's liability, created under paragraph 1192, has been interpreted by the Supreme Court of the State of Kansas, which is the highest court of that State, as follows: It is a contractual liability which arises upon the contract of subscription to the capital stock of said corporation, made by the defendant in becoming a stockholder. The defendant, in subscribing to said stock and becoming a stockholder, thereby guaranteed payment to the creditors of said corporation of an amount of the debt of said corporation equal to the par value of the stock held and owned by him. This amount is payable to the judgment creditors of said corporation who first pursue the remedy under said paragraph 1192 against the defendant until this amount has been paid by him; this liability is several, and an action to enforce the same is transitory and may be brought in any court of general jurisdiction in the State where personal service can be made upon the stockholder.

The declaration also sets out that the plaintiff has brought no action and recovered no judgment which in any event will reduce the amount unpaid on its execution below one thousand dollars.

Finally, the declaration sets out that this statute of the State of Kansas, as construed by the highest court of that State as above averred, imposes a liability upon the defendant to the plaintiff, and that full faith and credit should be given in the State of Rhode Island and the courts thereof to said public acts, records and judicial proceedings of the State of Kansas, and to the judicial construction of such laws, acts and records, by the Supreme Court of the State of Kansas, as required by Article IV., section 1, of the Constitution of the United States, and by section 905 of the Revised Statutes of the United States.

The defendant demurs to the plaintiff's declaration, and for grounds of demurrer says: —

1. The declaration does not set out the statutes of the State of Kansas under which it is claimed that the defendant is liable.

2. The cause of action set out in the declaration arises upon liabilities created by the statutes of the State of Kansas which will not be enforced by this court.

3. The declaration is insufficient and informal in other respects.

This demurrer was sustained by the Supreme Court of the State of Rhode Island, and the plaintiff in error assigns the following errors in the decision of that court (Record, pp. 14, 15): —

1. That in said suit there was drawn in question the construction of a statute of the United States, to wit, section 905 of the Revised Statutes of the United States, and the decision was against the title, right, privilege and immunity of the plaintiff in error specially set up and claimed under such statutes, to wit, said section 905 of the Revised Statutes of the United States.

2. That in said suit there was brought in question the Constitution of the United States, to wit, Article IV., section 1, of the Constitution of the United States, and the decision was against the title, right, privilege and immunity of the plaintiff in error specially set up and claimed under the Constitution, to

wit, said Article IV., section 1, of the Constitution of the United States.

3. That the State Court of Rhode Island decided, against the contention of the plaintiff in error, that it would not give full faith and credit to paragraph 1192 of the General Statutes of the State of Kansas, and to the judicial construction thereof by the highest courts of said State, as required by Article IV., section 1, of the Constitution of the United States, and by section 905 of the Revised Statutes of the United States, although their attention was drawn thereto, and thereby defeated the right of the plaintiff in error to enforce by appropriate action its claim against the said Farnum as aforesaid.

4. That the Supreme Court of Rhode Island decided, against the contention of the plaintiff in error, that it would not give full faith and credit to the judicial proceedings of the Circuit Court of the United States of America for the District of Kansas, as set forth in the pleadings, as required by Article IV., section 1, of the Constitution of the United States, and by section 905 of the Revised Statutes of the United States, although their attention was drawn thereto, and thereby defeated the right of the plaintiff in error to enforce by appropriate action its claim against said Farnum as aforesaid.

5. The Supreme Court of the State of Rhode Island erred in the decision rendered in this case in failing to give full faith and credit to the laws and constitution of the State of Kansas which were presented in the pleadings, in failing to give full faith and credit to the judicial construction of such laws by the highest court of the State of Kansas, and in failing to give full faith and credit to the judicial proceedings of the Circuit Court of the United States of America for the district of Kansas as set forth in the pleadings.

Points and Authorities.

The plaintiff in error claims jurisdiction in this case upon two grounds: *First*, because the Supreme Court of Rhode Island refused to give full faith and credit to the "public acts" of the State of Kansas as interpreted by the highest court of that State,

which were pleaded and made a part of the record. *Second*, because the Supreme Court of Rhode Island refused to give full faith and credit to the "judicial proceedings" of the Circuit Court of the United States for the District of Kansas.

I.

Public Acts.

First, Second and Third Assignments of Error.

The plaintiff in error submits that if paragraph 1192 of the General Statutes of Kansas and Article XII., section 2, of the Constitution of that State are necessarily involved in the decision of this case, then they must be given the same force and effect in the courts of Rhode Island that they have by law and usage at home.

This question was raised directly in the case of —

Chicago Railroad *v.* Wiggins Ferry Co., 119 U.S. 615.

That case was brought to this court from the Supreme Court of the State of Missouri, and the claim was made that the latter court had not given full faith and credit to the public acts of Illinois.

Mr. Chief Justice Waite says (p. 622): —

"The railroad company set up in its answer, as a defence to the action, that it had no authority to make the contract sued on, and in support of this defence put in evidence its Illinois Acts of Incorporation. Without doubt, the constitutional requirement (Article IV., section 1), that 'full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State,' implies that the public acts of every State shall be given the same effect by the courts of another State that they have by law and usage at home. This is clearly the logical result of the principles announced as early as 1813, in Mills *v.* Duryee, 7 Cranch, 481, and steadily adhered to ever since. The claim of the railroad company is that by law and usage in Illinois the operative effect of its

charter in that State is to make such a contract as that now sued on *ultra vires*."

"Whenever it becomes necessary under this requirement of the Constitution for a court of one State, in order to give faith and credit to a public act of another State, to ascertain what effect it has in that State, the law of that State must be proved as a fact."

(page 623): "Whether the charter of this company, in its operation on the contract now in suit, had any different effect in Illinois from what it would have, according to the principles of general law which govern like charters and like contracts, in Missouri and elsewhere throughout the country, was, under this rule, a question of fact in the Missouri court, to which no testimony whatever was offered."

(page 624): "It must somehow be made to appear on the face of the record that the facts as they were actually presented for adjudication made it necessary for the court to consider and give effect to the act of incorporation in view of some peculiar jurisprudence of Illinois rather than the general law of the land. That, as we have seen, was not done in this case. Consequently we have no jurisdiction, and the motion to dismiss is granted."

This court has considered this question with reference to the Insolvency Laws of Massachusetts, when raised in the courts of New York, regarding title to a ship on the high seas.

Crapo *v.* Kelly, 16 Wall. 610.

Mr. Justice HUNT (p. 621) says:—

"Without reference to whether Crapo was right or wrong, whether the question was *res integra* or *res adjudicata*, the fact that he claimed title under the Massachusetts record, and that his claim was overruled, gives the court jurisdiction of the present case."

This court has also so held with reference to the attachment laws of Illinois when their effect was in issue in the courts of New York.

Green *v.* Van Buskirk, 5 Wall. 312.

Same *v.* Same, 7 Wall. 139.

See Hervey *v.* R.I. Locomotive Works, 93 U.S. 664, 671.

Mr. Justice Davis in the second decision (p. 145) says: —

"The Supreme Court of New York necessarily decided what effect the attachment proceedings in Illinois had by law and usage in that State; and as it decided against the effect which Green claimed for them, this court had jurisdiction, etc."

See also —

Darby *v.* Mayer, 10 Wheat. 465:

This claim of jurisdiction was made in the following two cases: —

Lloyd *v.* Matthews, 155 U.S. 222.
Glenn *v.* Garth, 147 U.S. 360, 369, 370.

In each of these cases the record failed to show, as a matter of fact, what the law of the other State was, or what its interpretation was by the courts of that State.

The original purpose of Article IV., section 1, of the Constitution has been stated as follows: "Mr. Wilson and Dr. Johnson supposed the meaning to be, that judgments in one State should be the ground of actions in other States; and that acts of the legislatures should be included for the sake of acts of insolvency, etc."

Vol. 5 Elliot's Debates, p. 488, Edition of 1861 (Lippincott).

Acts of insolvency are given the same effect with respect to non-residents, in other States, under the Constitution, that they have by law and usage at home.

Cole *v.* Cunningham, 133 U.S. 107, 114.
Clay *v.* Smith, 3 Pet. 411.
Haggerty *v.* Amory, 7 Allen, 458.
Betts *v.* Bagley, 12 Pick. 572.

Certainly, acts of incorporation are of as great importance as acts of insolvency. Now that the creation of immense corporations doing business and having stockholders throughout all the States has become an every-day occurrence, it is of the highest importance that the obligations assumed by the stockholders shall be enforced against them wherever they reside, if legally possible. The plaintiff maintains that in every instance the character of the liability imposed by the charter and corporation acts of the State creating the corporation must be considered. Where, as under the laws of Kansas, a liability is imposed upon all who become stockholders, which is interpreted by the courts of Kansas to be contractual in its nature, arising upon the contract of subscription to the capital stock, and enforcible against stockholders severally, and transitory and not special in its remedy, it must be enforced in the courts of any State where personal service can be made upon the stockholder. It is a matter of contract. The stockholders, in taking their stock, submitted themselves to such a liability, enforcible in each jurisdiction by the appropriate action for enforcing a contractual liability against an individual.

The law of the State of Kansas is matter of fact in the courts of Rhode Island and must be alleged and proved.

"The question of what is the law of Massachusetts is a question of fact to be decided on evidence, and on such a question we can have no better evidence than the decisions of the highest judicial court of the State."

Per curiam, in Horton *v.* Reed, 13 R.I. 366.
Bartlett *v.* Dodge, 16 R.I. 740, 743.
O'Reilly *v.* Railroad, 16 R.I. 388, 389, 391.
Westgate *v.* Healy, 4 R.I. 523.

All the allegations of the law of Kansas set out in the declaration are admitted to be true as matters of fact by the defendant's demurrer.

Hanley *v.* Donaghue, 116 U.S. 1.
Lloyd *v.* Matthews, 155 U.S. 222.

The demurrer admits that the defendant is a stockholder in a Kansas corporation, and that all stockholders in such corporations are liable severally to judgment creditors of the corporation under paragraph 1192 of the General Statutes of Kansas and Article XII., section 2, of the Constitution of that State. The interpretation of those public acts is thereby necessarily involved, and is fully set out in the record. Article IV., section 1, of the Constitution of the United States requires that they be given the same force and effect in the courts of Rhode Island that they have by law and usage in Kansas. The plaintiff claims a right under the constitution and statutes of the State of Kansas, presented in the record, which was overruled by the Supreme Court of the State of Rhode Island. This court has jurisdiction of such a case.

II.

Judicial Proceedings.

First, Fourth and Fifth Assignments of Error.

The plaintiff in error submits as the second ground of jurisdiction that the Supreme Court of Rhode Island failed to give full faith and credit to the judicial proceedings of the Circuit Court of the United States for the District of Kansas as set forth in the pleadings.

Sections 905 and 709 of the Revised Statutes of the United States have uniformly been held to require that a State court give due effect to the judgment of a United States Court when presented in the record and necessarily involved.

Embry *v.* Palmer, 107 U.S. 3, 9.
Dupasseur *v.* Rochereau, 21 Wall. 130, 134.
Crescent Live Stock Co. *v.* Butchers' Union, 120 U.S. 141, 146, 147.
Pittsburg R.R. *v.* Long Island Trust Co., 172 U.S. 493.

The judgment obtained by the plaintiff in error against the Commonwealth Loan and Trust Company, with the return of execution wholly unsatisfied, as set out in the declaration, has the effect of establishing a *prima facie* cause of action against all who are admitted stockholders at that time.

Howell *v.* Manglesdorf, 33 Kansas, 194.
Van de Mark *v.* Barons, 52 Kansas, 779. (*Not* Bemark *v.* Barrows, as in Exhibit "C," Record, p. 7.)

The case of Grund *v.* Tucker, 5 Kansas, 70, referred to in Howell *v.* Manglesdorf, holds further that judgment against the corporation is conclusive upon the stockholder as to the amount and validity of the creditor's claim against the corporation.

That is the general doctrine.

Hawkins *v.* Glenn, 131 U.S. 319.
Warrington *v.* Ball, 90 Fed. Rep. 464.
Dexter *v.* Edmands, 89 Fed. Rep. 467.
Am. Mortgage Co. *v.* Woodworth, 79 Fed. Rep. 951.
MacVickar *v.* Jones, 70 Fed. Rep, 754.
Thayer *v.* Lithograph Co., 108 Mass. 523, 528.
Milliken *v.* Whitehouse, 41 Maine, 527.
Guerney *v.* Moore, 131 Mo. 650.

See also —

Penniman, Petitioner, 11 R.I. 333, 337.
National Bank *v.* Angell, 18 R.I. 1.

This doctrine is reaffirmed by the Supreme Court of Kansas in a decision rendered after this suit was brought.

Ball *v.* Reese, 58 Kansas, 614.

The judgment against the corporation in the Federal Court for the District of Kansas has the effect in Kansas of creating an obligation on the part of each stockholder to pay in satisfaction thereof the full par value of the stock owned by him at the time of the return of execution. An alleged stockholder has the right to come into court and deny that he is a stockholder, or prove that he has paid the amount of his liability, or plead the statute of limitations; but the judgment against the corporation stands, and upon the return of *nulla bona* on the execution is the evidence that the stockholder's liability has accrued. Such a judgment and execution constitute a cause of action against the stockholders severally.

If this court is to go behind the averments of the declaration and consult the Kansas decisions referred to in Exhibit "C" (p. 7), the plaintiff in error submits that those cases interpret the liability under paragraph 1192 as follows: —

The liability is contractual.

Howell *v.* Manglesdorf, 33 Kansas, 194, 199.
Abbey *v.* Dry Goods Co., 44 Kansas, 415, 418.
Abbey *v.* Long, 44 Kansas, 688, 691.
Plumb *v.* Bank, 48 Kansas, 484.
Achenbach *v.* Pomeroy Coal Co., 2 Kans. App. 357, 359; 42 Pac. Rep. 734.

The liability is several and not joint.

Abbey *v.* Dry Goods Co., 44 Kans. 415.
Bank *v.* Magnusson, 57 Kans. 573. (*Not* 52 Kansas.)

The liability accrues upon the return of execution unsatisfied on a judgment against a corporation.

Howell *v.* Manglesdorf, 33 Kans. 194.
Van de Mark *v.* Barons, 52 Kans. 779.

The liability runs directly to the creditors and not to the corporation.

Abbey *v.* Dry Goods Co., 44 Kans. 415, 418 (citing Cook, Stock and Stockholders, 1st Ed., sect. 216).
Abbey *v.* Long, 44 Kans. 688.

The liability is transitory and is not a special remedy.

Howell *v.* Manglesdorf, 33 Kans. 194, 199.
Approved in Wilson *v.* Seligman, 144 U.S. 41, 47.

Such a liability can be enforced in any jurisdiction with the same force and effect as in Kansas. The stockholders assented in their contract of subscription to such a liability to be enforced in such an action.

The United States Court of Appeals for the Third Circuit has held that such a judgment must be given its full force and effect against a stockholder in Pennsylvania.

Warrington *v.* Ball, 90 Fed. Rep. 464.

See also —

Hale *v.* Hardon, 95 Fed. Rep. 747, 760.

The Court of Appeals of Maryland has so decided upon the same question under the Virginia statute.

Glenn *v.* Williams, 60 Md. 93, 112, 115.

Cited with great approval in —

Hawkins *v.* Glenn, 131 U.S. 319, 330.
Glenn *v.* Liggett, 135 U.S. 533, 534.

To the same effect, see —

Lehman *v.* Glenn. 87 Ala. 618.
Mut. Fire Ins. Co. *v.* Phœnix Co., 108 Mich. 170.
Parker *v.* Stoughton Mill Co., 91 Wis. 174.
Hancock Bank v. Ellis, 166 Mass. pp. 418.

"When Congress gave the effect of a record to the judgment it gave all the collateral consequences."

Mr. Justice STORY in Mills *v.* Duryee, 7 Cranch, 481, 484.

"It must be obvious, when the Constitution declares that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and provides that Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof, that the latter clause, as it relates to judgments, was intended to provide the means of giving to them the conclusiveness of judgment upon the merits, when it is sought to carry them into judgments by suits in the tribunals of another State" (p. 324). "When, therefore, this court said in Mills *v.* Duryee, 7 Cranch, 481, 'If it be a record, conclusive between the parties, it cannot be denied but by the plea of *nul tiel* record,' this language does not admit of the interpretation that a plea not denying the judgment, but which resists it upon the ground of a release, payment, or a presumption of payment, from the lapse of time, whether such presumption be raised by the common law prescription or by a statute of limitation, may not be pleaded" (p. 326).

Mr. Justice WAYNE in McElmoyle *v.* Cohen, 13 Pet. 312, 324, 326.

The judgment in one State that an action has been barred by the statute of limitations of that State, when properly pleaded in an action on the same claim in another State, will be given full faith and credit and constitute a complete defence.

Weeks *v.* Harriman, 65 N.H. 91.
Sweet *v.* Brackley, 53 Maine, 346.
Wernse *v.* McPike, 100 Mo. 476.
FREEMAN on Judgments, 4th Ed., section 575.
RENO on Non-Residents, section 308.

So, also, a judgment, even after reversal, may be a complete defence in a suit for malicious prosecution.

"Its integrity, its validity, and its effect are complete in all respects between all parties in every suit and in every form where it is legitimately produced as the foundation of an action, or of a defence, either by plea or in proof, as it would be in any other circumstances. While it remains in force it determines the rights of the parties between themselves, and may be carried into execution in due course of law to its full extent, furnishing a complete protection to all who act in compliance with its mandate; and even after reversal it still remains — as in the case of every other judgment or decree in like circumstances — sufficient evidence in favor of the plaintiff who instituted the suit or action in which it is rendered, when sued for a malicious prosecution, that he had probable cause for his proceeding."

> Mr. Justice MATTHEWS in Crescent Live Stock Co. *v.* Butchers' Union, 120 U.S. 141, 157, 158.

It has always been held by this court that a decree, ordering an assessment upon the stockholders of a corporation for the collection of unpaid subscriptions to the capital stock, is binding upon all the stockholders, although they were not parties to the suit.

> Great Western Telegraph Co. *v.* Purdy, 162 U.S. 329, 337.
> Glenn *v.* Marbury, 145 U.S. 499.
> Glenn *v.* Liggett, 135 U.S. 533.
> Hawkins *v.* Glenn, 131 U.S. 319.

"A stockholder is so far an integral part of the corporation that, in the view of the law, he is privy to the proceedings touching the body of which he is a member."

> Mr. Chief Justice FULLER in Hawkins *v.* Glenn, 131 U.S. 319, 329.

Such a decree is conclusive upon the stockholders as to the necessity and amount of the assessment.

"The order of assessment, whether made by the directors, as provided in the contract of subscription, or by the court as the successor in this respect of the directors, was doubtless, unless directly attacked and set aside by appropriate judicial proceedings, conclusive evidence of the necessity for making such an assessment, and to that extent bound every stockholder, without personal notice to him."

Mr. Justice GRAY in Great Western Telegraph Co. *v.* Purdy, 162 U.S. 329, 336, 337.

An alleged stockholder is still at liberty to deny that he is a stockholder and to make special defences.

"The whole effect of the order of assessment being to fix the amount which any stockholder liable under his contract of subscription should pay, and to authorize the receiver to bring suits against stockholders for the same, but not to determine whether the present defendant, or any other particular stockholder was liable for anything, the Iowa Court, by sustaining the defence of the statute of limitations, did not deny to the judicial proceeding of Illinois the full faith and credit to which it was entitled."

Mr. Justice GRAY in Great Western Telegraph Co. *v.* Purdy, 162 U.S. 329, 337.

See also —

Pittsburg Railroad *v.* Long Island Trust Co., 172 U.S. 493, and cases cited.
Huntington *v.* Attrill, 146 U.S. 657, 666, 686.
Carpenter *v.* Strange, 141 U.S. 87.
Cole *v.* Cunningham, 133 U.S. 107.
Embry *v.* Palmer, 107 U.S. 3.
Insurance Co. *v.* Harris, 97 U.S. 331.

There seems to be no valid distinction between the effect of such an order for an assessment, and the effect under the Kansas laws of a judgment against the corporation with the return of execution unsatisfied. The judgment is conclusive upon the stockholder as to the validity and amount of the creditor's cause of action against the corporation. Upon the return of *nulla bona* it becomes a cause of action against each stockholder for an amount not exceeding the par value of his stock.

Hale *v.* Hardon, 95 Fed. Rep. 747, 759.
Hanson *v.* Davison, 76 No. W. Rep. 254, 256 (Minn.).
Holland *v.* Development Co., 65 Minn. 324, 329–331.
2 Morawetz, Corporations, sec. 886.

The judgment in the present record is admitted by the demurrer to be valid. The defendant admits that he is a stockholder. The defendant cannot deny that judgment, but can only resist it on the ground of special defences such as payment or the statute of limitations. This is its effect in the jurisdiction where it was rendered.

Inasmuch as the Supreme Court of Rhode Island refused to give this effect or any effect to the judicial proceedings of the Circuit Court of the United States for the District of Kansas as set forth in the declaration, this court has jurisdiction of this case.

III.

Liability is Contractual.

The Supreme Court of Rhode Island, in its opinion (Record, p. 9), says: "The declaration does not aver that the defendant has made a contract, nor that the law under which the corporation exists has made him a contracting party, but that an opinion of the Supreme Court of Kansas says that the relation between a stockholder and a corporation creditor is that of a contract."

That court further says (p. 10): "Assuming, however, that the opinion of the Supreme Court of Kansas is that the relation of a stockholder to creditors is contractual, it is not a binding opinion upon us; it is not a judgment to which full faith and credit must be given under the Federal Constitution, and, giving to it the high respect which is due to the court from which it comes, it still falls short of establishing, as a matter of pleading in this declaration, the fact of a contract by the defendant in Kansas by virtue of the statute." The Rhode Island Court here admits that the construction of the Kansas statute is necessarily involved in this case, and then holds that it will not give that statute the same force and effect which it has in Kansas.

The courts of Kansas have uniformly held the liability to be contractual.

"While the liability is statutory, it is one which arises upon the contract of subscription to the capital stock of a corporation, and an action to enforce the same is transitory, and may be brought in any court of general jurisdiction in the State where personal service can be made upon the stockholder."

Howell *v.* Manglesdorf, 33 Kans. 194, 199; 5 Pac. Rep. 702.

"The nature of this liability is peculiar. It seems to have been created for the exclusive benefit of corporate creditors. The liability rests upon the stockholders of a corporation to respond to the creditors for an amount equal to the stock held by each, and it has been held that an action to enforce this liability can only be maintained by the creditors themselves in their own right and for their own benefit. Cook on 'Law of Stock and Stockholders,' section 216."

Abbey *v.* Dry Goods Co., 44 Kans. 415, 418; 24 Pac. Rep. 427.

"The law says: You may combine your capital, create a corporation, relieve yourselves of the common law liability of copartners, and obtain the many other advantages growing out of corporate existence; but, as a protection to the public, in lieu of the partnership liability you escape, you shall be held not only liable to the corporation and creditors for the full

amount of your stock subscribed, but, to guarantee further protection to creditors of the corporation, you shall, if the corporation itself becomes insolvent, be charged with a further liability to such creditors equal to the amount of your stock in the corporation."

Abbey *v.* Long, 44 Kans. 638, 691; 24 Pac. Rep. 1112.

(The above citation from Abbey *v.* Long indicates that the stockholder's liability under the Kansas law is a liability retained by the State of Kansas for the benefit of creditors, in lieu of the partnership liability, when granting the corporation a charter.

Upon this point see —

Hawthorne *v.* Calef, 2 Wall. 10, 22.
Conant *v.* Van Schaick, 24 Barbour, 87.
N. E. Bank *v.* Stockholders, 6 R.I. 154, 188, 189.
Carrol *v.* Green, 92 U.S. 509, 513.
Marcy *v.* Clark, 17 Mass. 330, 334.
Hardy *v.* Manufacturing Co., 80 Va. 417.
Lowry *v.* Inman, 46 N.Y. 119.
Eames *v.* Savage, 77 Me. 219.)

"Under our Constitution and Statutes the individual liability stands as a sort of surety for the corporate liability, and creditors of the corporation are supposed to contract with reference to the individual responsibility of the stockholders."

Plumb *v.* Bank of Enterprise, 48 Kans. 484; 29 Pac. Rep. 700.

"The liability of a stockholder in an insolvent corporation is of the nature of a liability on contract, and survives against the legal representatives of a deceased stockholder. This liability may be determined by an ordinary action in a district court or established by proceedings in a probate court which has 'jurisdiction to consider and determine all demands against any estate.'"

Achenbach *v.* Pomeroy Coal Co., 2 Kans. App. 357, 359; 52 Pac. Rep. 734.

If the language of any of these decisions is in the nature of *dicta*, yet that would be controlling evidence of the judicial interpretation of the statute of Kansas in the absence of any decision to the contrary.

Laing *v.* Rigney, 160 U.S. 531, 542, 544.
Hackett *v.* Potter, 135 Mass. 349, 352.

The decisions of the Supreme Court of Rhode Island have uniformly recognized the contractual character of a stockholder's relation to a corporation.

"The provisions of the charter apply as to such debts the moment a person becomes a stockholder. The condition on which he holds stock, even before he contracted any debts to the bank, is that if he do become indebted his stock shall be liable."

COURT in Cross *v.* Phœnix Bank, 1 R.I. 39, 41.

"We think the intent of the section was to superadd the personal and individual liability of the stockholders to the corporate liability."

"The General Assembly acted upon the statement in the petition; and thus both parties to the contract — the stockholders on the one hand and the General Assembly on the other — affirm the construction which the court have put upon the charter."

"Upon the faith of this liability of the private property of the stockholders the bank has obtained credit, and the stockholders ought not now to be permitted to repudiate it."

GREEN, C. J., in Atwood *v.* Rhode Island Bank, 1 R.I. 376, 387.

"In other words, each thus contracted, not with the other, but with a corporation, existing but not yet organized, to take the number of shares of stock set opposite his name, provided responsible subscriptions to the amount of $175,000 could be

obtained; and when these were obtained, and the railroad company upon the faith of them proceeded to organize and to act, the subscription contract of each with the company became perfect and mutually binding both upon the subscribers and the company, as the respective parties to the contract."

AMES, C. J., in Diman *v.* Railroad, 5 R.I. 130, 135.

See also —

Atlantic Company *v.* Mason, 5 R.I. 463, 470.

"It is true that the common law visits no personal liability upon the members of a corporation aggregate for its contracts; but for this very reason the policy of this and other States and countries of the common law has, by express enactment, imposed such a liability in some form upon stockholders in incorporated trading and manufacturing companies, in order that the public may be secured against the consequences of the extravagant speculations, or even of the incautious enterprises of such bodies corporate."

"In the contingency, then, that a judgment creditor of the corporation can find no corporate property upon which to levy his execution, he is entitled to proceed against such stockholders as are liable for his debt, as joint contractors, or copartners."

AMES, C. J., in New England Bank *v.* Stockholders, 6 R.I. 154, 188, 189.

"There is no difference between the parties here or their counsel as to the *general* rule, that the obligation of a contract in favor of or against the corporation or corporators cannot be impaired, nor can a right under the provisions of the charter be discharged or defeated."

BRAYTON, C. J., in Gardner *v.* Hope Ins. Co., 9 R.I. 194, 200; (p. 201, citing Hawthorne *v.* Calef, 2 Wall. 10).

See also —

Slocum *v.* Providence Steam Co., 10 R.I. 112, 115.

"It is difficult to see how the new act violates any of the conditions laid down in this treatise. It does not in the least alter or diminish the liability, either of the corporation or of the stockholder on the contract."

POTTER, J., in Penniman, Petitioner, 11 R.I. 333, 346; (p. 343, citing Hawthorne *v.* Calef).

The stockholder's liability prescribed by the laws of Kansas is plainly not contrary to the policy of the State of Rhode Island.

Cases cited above.

General Laws, Rhode Island, 1896, chap. 180, sects. 1, 12, 22; chap. 178, sect. 9.

Public Statutes, Rhode Island, 1882, chap. 155, sects. 1, 12, 22; chap. 153, sect. 9.

General Statutes, Rhode Island, 1872, chap. 142; chap. 140.

So, also, foreign corporations are permitted to do business in Rhode Island under the laws of their creation.

"A foreign corporation doing business in this State has only such powers as have been conferred upon it by its charter or by the laws of the State to which it owes its existence; it gains no additional powers by doing business here, because this State does not give it any, but only allows it, as a matter of comity, to exercise such as it has."

Per curiam, Pierce *v.* Crompton, 13 R.I. 312, 313.

"A corporation can have but one legal residence, and that must be within the State or sovereignty creating it, although by comity it may be allowed to do business through its officers and agents in other jurisdictions."

TILLINGHAST, J., in Ireland *v.* Globe Milling Co., 19 R.I. 180, 184.

It seems clear from these citations that the law of the sovereignty creating a corporation governs that corporation and all its members. The defendant, in becoming a stockholder in the Commonwealth Loan and Trust Company, took his shares subject to the liabilities imposed by the State of Kansas.

The Supreme Court of Rhode Island, in giving its decision (Record, p. 11), purported to rely on an earlier decision in Sayles *v.* Bates, 15 R.I. 342. That case holds as follows (pp. 345, 346): "One of the defendants is a married woman and was such when she became a stockholder. She demurs, denying her liability on the ground that the liability is predicated on contract, and, being a married woman, she was incapable of contracting. We do not think this view is tenable. The liability is a statutory liability, and as such is incident to the ownership of the stock. If a married woman is capable of becoming a stockholder, which is not questioned, she becomes subject to the liability by force of the statute, not by contract, when she becomes a stockholder. *In re* Reciprocity Bank, 22 N.Y. 9."

Upon whatever theory married women are allowed to become stockholders, it is clear that they are held subject to a stockholder's liability, not because there is no contract, but because the statute imposing the stockholder's liability supersedes the common law in that particular, and makes them liable in spite of their common law incapacity to contract.

"It is said that *femes covert* are not liable to suit or judgment at the common law; and, in general, this is true. It is also true that the apportionment of liability amongst stockholders in banks, when duly confirmed, becomes a judgment against each stockholder to be enforced by execution, as in other cases. But it was competent for the legislature to depart from the rules and

analogies of the common law, and to make married women and their estates liable in this proceeding, as other shareholders in banks are made liable."

COMSTOCK, C. J., In the Matter of Reciprocity Bank, 22 N.Y. 9, 15, 16.

This is the doctrine generally.

1 COOK, Stock and Stockholders, 4th Ed., 1898, section 250, and cases cited.

The Supreme Court of the United States is not bound by the interpretation by the Supreme Court of Rhode Island of paragraph 1192 of the General Statutes of Kansas, or of the character of the relations between a stockholder in a Kansas corporation and that corporation and its creditors.

"When the question is whether the statute created a contract which has been impaired by a subsequent law of the State, or whether the original liability created by the statute was such that a judgment on it has not been given due faith and credit in the courts of another State, . . . this Court must decide for itself the true construction of the statute."

Mr. Justice GRAY in Scott *v.* McNeal, 154 U.S. 34, 45.
Huntington *v.* Attrill, 146 U.S. 657, 683, 684.
Douglas *v.* Kentucky, 168 U.S. 488, 502.
McCullough *v.* Virginia, 172 U.S. 102.
Pittsburg Railroad *v.* Long Island Trust Co., 172 U.S. 493.
Great West. Tel. Co. v. Purdy, 162 U. S. fr. 335.

According to the above cases this doctrine applies to questions arising under Article IV., section 1, of the Constitution, as well as under Article I., section 10, or the Fourteenth Amendment.

This court has always held the relations of a stockholder to the corporation and its creditors to be contractual.

Dartmouth College *v.* Woodward, 4 Wheat. 518.
Pearsall *v.* Railroad, 161 U.S. 646, 660.
Carrol *v.* Green, 92 U.S. 505, 513.
Richmond *v.* Irons, 121 U.S. 27, 56.
Hawkins *v.* Glenn, 131 U.S. 319, 332.
Stuart *v.* Hayden, 169 U.S. 1, 8.

A stockholder's liability, such as is set out in the declaration, is a contract within the meaning of Article I., section 10, of the Constitution, forbidding any State to pass any "law impairing the obligation of contracts."

Hawthorne *v.* Calef, 2 Wall. 10.
Terry *v.* Anderson, 95 U.S. 633.

"A corporation of one country may be excluded from business in another country (Paul *v.* Virginia, 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation. Such being the law, it follows that every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and whatever is done by that government in furtherance of that policy which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him. He is conclusively presumed to have contracted with a view to such laws of that government, because the cor-

poration must of necessity be controlled by them, and it has no power to contract with a view to any other laws with which they are not in entire harmony."

Mr. Chief Justice WAITE in Canada Railroad *v.* Gebhard, 109 U.S. 527, 537, 538.

"It may be admitted that any State may, by its laws, require, as a condition precedent to the right of a corporation to be organized or to transact business within its territory, that it shall appoint an agent there on whom process may be served; or even that every stockholder in the corporation shall appoint an agent upon whom, or designate a domicile at which, service may be made within the State, and that, upon his failure to make such appointment or designation, the service may be made upon a certain public officer, and that judgment rendered against the corporation after such service shall bind the stockholders, whether within or without the State. In such cases, the service is held binding because the corporation or the stockholders, or both, as the case may be, must be taken to have consented that such service within the State shall be sufficient and binding; and no individual is bound by the proceedings who is not a stockholder. Lafayette Ins. Co. *v.* French, 18 How. 404: *ex parte* Schollenberger, 96 U.S. 369; Pennoyer *v.* Neff, 95 U.S. 714, 735; Vallee *v.* Dumergue, 4 Exch. 290, 303; Copin *v.* Adamson, L. R. 9 Exch. 345, 355, 356, and 1 Ex. D. 17."

Mr. Justice GRAY in Wilson *v.* Seligman, 144 U.S. 41, 45.

The foregoing case of Wilson *v.* Seligman is a decision upon the Missouri Statute from which the Kansas Statute was in part copied. Paragraph 1192 of the Kansas Statutes is practically the same as the Missouri Statute, with the addition of the following clause: "or the plaintiff in the execution may proceed by action to charge the stockholders with the amount of his judgment." This clause provides a remedy against non-resident stockholders.

"This ruling does not deprive a creditor of the insolvent corporation of a remedy against the stockholder residing in another State and upon whom service cannot be obtained here. While

the liability is statutory, it is one which arises upon the contract of subscription to the capital stock of the corporation, and an action to enforce the same is transitory and may be brought in any court of general jurisdiction in the State where personal service can be made upon the stockholder."

JOHNSTONE, J., in Howell *v.* Manglesdorf, 33 Kans. 194, 199.

This is the interpretation, by the highest court of Kansas, that "action" in this clause of paragraph 1192 does not mean a special remedy peculiar to that court, but an appropriate action in any jurisdiction for enforcing a contractual liability against an individual.

In the light of such a statutory provision thus interpreted by the Supreme Court of Kansas, the plaintiff in error contends that the defendant, as a stockholder, must be taken to have consented that an appropriate action for enforcing a contractual liability may be brought against him in the courts of Rhode Island by any judgment creditor of the corporation.

This court has already decided that a liability like that set out in the plaintiff's declaration is a cause of action in a Federal Court.

Flash *v.* Conn., 109 U.S. 371.

"The right of the plaintiffs to sue upon this liability in any court having jurisdiction of the subject-matter and the parties is, therefore, clear. Dennick *v.* Railroad, 103 U.S. 11."

Mr. Justice WOODS in Flash *v.* Conn., p. 379.

The Kansas liability is certainly not penal.

Huntington *v.* Attrill, 146 U.S. 657.

"As the statute was not penal, it is not important whether the liability is called statutory or one based upon contract. It is statutory because it did not exist at common law; and it is contractual because 'every one who becomes a member of the company by subscribing to its stock assumes this liability.' (Flash *v.* Conn., *supra*.)"

SHIPMAN, J., in Whitman *v.* Bank of Oxford, 83 Fed. Rep. 288, 294 (N.Y.); 51 U.S. App. 536, 582.

"Undoubtedly the obligation is declared by the statute to attach to the ownership of the stock, and in that sense may be said to be statutory. But as the ownership of stock, in most cases, arises from the voluntary act of the stockholder, he must be regarded as having agreed or contracted to be subject to the obligation."

Mr. Justice SHIRAS in National Bank *v.* Hawkins, 174 U.S. 364, 372.

The plaintiff in error does not maintain that every statutory liability imposed upon stockholders in corporations can be enforced in other States than that creating the corporation. The liability imposed by the laws of Ohio, for instance, requires proceedings in equity, drawing before the court all the stockholders, all the creditors and the corporation itself, for the liquidation of the affairs of the corporation. This can be done only in the jurisdiction where the corporation was organized. Giving this liability the same force and effect in other jurisdictions that it has in Ohio, leads to the same result, — that the liability can be enforced only in Ohio.

"Somewhat anomalous and arbitrary remedies, like that existing in the Constitution and Statutes of the State of Kansas, have been upheld and enforced in Federal Courts, largely upon the ground that the stockholder submitted himself to the operation of the remedy and contracted with the public in respect to it. It could, perhaps, be said with consistency that creditors, on the other hand, who deal with a corporation and voluntarily

contract, are bound by the disabilities and conditions prescribed by the government creating the corporation; and Railway Co. *v.* Gebhard, 109 U.S. 527, 537, would seem to justify the position that creditors and members of the public who deal with a corporation are bound by the remedy and the liability prescribed, together with the disabilities, if any, under the laws of the State creating the corporation and prescribing the remedy.

"If, therefore, there is a lack of efficiency in the remedy prescribed by the statute of Ohio (a question which is not necessary we should decide), it would seem, upon reason, that the rule which would hold the stockholder to an arbitrary and anomalous remedy, on the ground of contract, should hold the creditor to an inefficient and practically inoperative remedy upon the same ground."

ALDRICH, J., State Bank *v.* Sayward, 91 Fed. Rep. 443, 446 (Mass. C. C. A.).

See also —

Post *v.* Toledo Railroad, 144 Mass. 341.
Rice *v.* Hosiery Co., 56 N.H. 114.
Aultman's Appeal, 98 Pa. St. 505.

A similar liability was that prescribed by the statutes of New Hampshire.

Erickson *v.* Nesmith, 15 Gray, 221.
Same *v.* Same, 4 Allen, 223.
Same *v.* Same, 46 N.H. 371.
Hadley *v.* Russell, 40 N.H. 109.

The plaintiff claims upon the foregoing authorities that the defendant, in becoming a stockholder in a Kansas corporation, submitted himself to the liability under paragraph 1192, prescribed by the laws of Kansas, as interpreted by the courts of that State. It was a part of his contract that the action prescribed by the last clause of paragraph 1192, and interpreted in

Howell *v.* Manglesdorf, to be enforcible in any jurisdiction where personal service could be made upon the stockholder, might be brought against him in the courts of Rhode Island to enforce that liability. He agreed that this should be the effect of a judgment against the corporation in Kansas with a return of *nulla bona* on the execution. This constituted a contract in which the interpretation of paragraph 1192 was necessarily involved, as also the effect of the judicial proceedings in the Circuit Court of the United States for the District of Kansas. That public act and those judicial proceedings were entitled to the same force and effect in Rhode Island that they had in Kansas. This was denied them. The judgment of the Supreme Court of Rhode Island should therefore be reversed.

IV.

Decisions in other Jurisdictions.

The declaration in this case was modelled on a declaration which had previously been held to state a good cause of action by the Supreme Court of Massachusetts.

Hancock Nat. Bank *v.* Ellis, 166 Mass. 414.

A similar declaration has been sustained on demurrer in the following cases, approving Hancock Bank *v.* Ellis.

Bell *v.* Farwell, 176 Ill. 489.
Western Nat. Bank *v.* Lawrence, 76 N.W. Rep. 105 (Mich.).

In the decision of Hancock Bank *v.* Ellis, the court declined to look into the Kansas decisions, although they were annexed to the declaration, as in this case, but decided on the averments

of the declaration. That court has, however, passed upon the merits of the case and decided to enforce the liability.

Hancock Bank *v.* Ellis, 172 Mass. 39.

This liability has been enforced in other States in the following decisions: —

Ferguson *v.* Sherman, 116 Calif. 169.
Guerney *v.* Moore, 131 Mo. 650.

See also —

Cushing *v.* Perot, 175 Pa. St. 66, 73.
Tuttle *v.* Bank, 161 Ill. 497 (dissenting opinion).
But compare Bell *v.* Farwell, *supra*.

In New York a demurrer was sustained to a declaration setting out the statutes of Kansas, but not the judicial interpretation of them.

"The complaint contains no allegation as to the meaning or effect of these statutes, or of the provision of the Constitution quoted under the adjudications of the courts of Kansas, nor any allegation that any judgment has been obtained against the defendant in the courts of that State upon his liability as a stockholder, under these provisions of the local law. We are, therefore, obliged to construe them ourselves."

O'Brien, J., in Marshall *v.* Sherman, 148 N.Y. 9, 17.

In the Federal Courts this liability has been universally enforced:

In the Circuit Courts of Appeals;

Rhodes *v.* Bank, 66 Fed. Rep. 512 (Ill.).
Whitman *v.* Bank of Oxford, 83 Fed. Rep. 288 (N.Y.).
Warrington *v.* Ball, 90 Fed. Rep. 464 (Pa.).

See also —

State Bank *v.* Sayward, 91 Fed. Rep. 443 (Mass.).
Auer *v.* Lombard, 72 Fed. Rep. 209 (Mass.).
Hale *v.* Hardon, 95 Fed. Rep. 747 (Mass.).

In the Circuit Courts;

Bank *v.* Rindge, 57 Fed. Rep. 279 (Calif.).
McVickar *v.* Jones, 70 Fed. Rep. 754 (N.H.).
Bank *v.* Whitman, 76 Fed. Rep. 697 (N.Y.).
Amer. Mortgage Co. *v.* Woodworth, 79 Fed. Rep. 951 (N.Y.); s.c. 82 Fed. Rep. 269.
R.I. Mortgage Co. *v.* Moulton, 82 Fed. Rep. 979 (Ill.).
Schiffer *v.* Columbia College, 87 Fed. Rep. 166 (N.Y.).
Mechanics Bank *v.* Fidelity Ins. Co., 87 Fed. Rep. 113 (Pa.); s.c. 91 Fed. Rep. 456.
Brown *v.* Trail, 89 Fed. Rep. 641 (Md.).
Dexter *v.* Edmands, 89 Fed. Rep. 467 (Mass.).
Bank v. Richter, 46 Fed. Rep. 70. (N.J.)

Summary.

In conclusion, the claim of the plaintiff in error is as follows: The defendant admits by his demurrer that he is a stockholder in the Commonwealth Loan and Trust Company, a Kansas corporation which is not a railway, charitable or religious corporation. As such stockholder he is held by law to have taken his stock, subject in all respects to the laws of the jurisdiction creating the corporation, and to contract with reference to those laws. Those laws are set out in the declaration as matters of fact, and are admitted by the demurrer. They are, therefore, necessarily involved in the decision of this case. The judicial proceedings of the United States Circuit Court for the District of Kansas are also well pleaded and their effect is stated in the declaration. Those proceedings constitute a complete cause of action against the defendant as a stockholder.

These public acts of Kansas and judicial proceedings of the Federal Court of that district are entitled to full faith and credit in the courts of Rhode Island under sections 709 and 905 of the Revised Statutes of the United States, and Article IV., section 1, of the Constitution. They have not been given the same effect by the Court of Rhode Island that they have in Kansas, or, in fact, any effect whatever. This court, therefore, has jurisdiction of the case to enforce the right claimed by the plaintiff in error under the Statutes and Constitution of the United States. This court, in taking jurisdiction, will determine for itself what effect the judicial proceedings declared on have in the State of Kansas, and what effect is there given to the public acts of that State here involved. The plaintiff in error maintains that this court, under all the authorities and upon settled principles of law, can come to but one conclusion, namely, that the public acts and judicial proceedings set out in the record have the effect claimed for them by the plaintiff in error. They constitute a liability, contractual in its nature, transitory and several. The declaration states a complete cause of action against the defendant. Therefore, the judgment of the Supreme Court of Rhode Island should be reversed.

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No. 89.
Sup. Ct. Brf. of Jaquith for T. C.

FILED
DEC 19 1899
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.
Filed Dec. 19, 1899.

No. 89. OCTOBER TERM, 1899.

THE HANCOCK NATIONAL BANK, PLAINTIFF IN ERROR,

v.

JONATHAN W. FARNUM.

Supplemental Brief for Plaintiff in Error.

IN reply to the defendant's brief the plaintiff in error submits that the decisions of the Supreme Court of Kansas, interpreting paragraph 1192 of the Kansas Statutes, are the evidence of the effect which that paragraph has by law and usage in Kansas. It is not necessary that such decisions shall be made in this very proceeding, in order to be evidence of the law of Kansas.

Green *v.* Van Buskirk, 7 Wall. p. 146.
Laing *v.* Rigney, 160 U.S. 531.
Hanley *v.* Donoghue, 116 U.S. 1.

If the plaintiff in error is correct in the premise that the defendant is conclusively presumed to have taken his stock with reference to the laws of Kansas and the liabilities there prescribed, then the defendant is certainly bound by the interpretation of paragraph 1192 by the court of Kansas. Inasmuch

as the law of Kansas is a matter of fact in the courts of Rhode Island, it must be pleaded in order to state a cause of action. The failure to recognize this principle is the sufficient explanation of the following cases: —

Lloyd *v.* Mathews, 155 U.S. 222.
Glenn *v.* Garth, 147 U.S. 360.
Bank of North America *v.* Rindge, 154 Mass. 203.
Marshall *v.* Sherman, 148 N.Y. 9.
Tuttle *v.* Bank, 161 Ill. 497.

The defendant now claims that the plaintiff in error should have alleged in the declaration that it had recovered a judgment against the corporation in the courts of Rhode Island, and had execution issued and returned unsatisfied in that court.

The plaintiff in error would reply first, that this ground was not alleged in the defendant's demurrer, and is not open to the defendant at this time.

General Laws of Rhode Island, 1896, chap. 239, sect. 16: "Whenever a demurrer is filed, the same need not be more formally stated than that the party demurring demurs to such declaration or plea, but shall be accompanied with a statement of the specific grounds of demurrer; and no other grounds shall be considered under such demurrer than those so stated, unless for cause shown and on proper terms."

Third National Bank *v.* Angell, 18 R.I. 1, MATTESON, C. J. (p. 4): "The defendants also suggest that the declaration is bad because the judgment is stated only as inducement under a 'whereas,' and that a material fact such as the obtaining of the judgment, which is traversable, should be directly alleged. Doubtless the criticism is well founded, but the defect is merely a matter of form and not of substance. Formal defects can be taken advantage of only by special demurrer and not a general demurrer like the present."

The plaintiff in error further replies that such an averment is not necessary to support this action. The case of National Tube Works Company *v.* Ballou, 146 U.S. 517, cited on page 12 of the defendant's brief, is not in point. That is the case of a creditor's bill based upon the general equity jurisdiction of the United States Circuit Court for the Southern District of New York. As stated in the decision: "The principle invoked was that the plaintiff's remedy at law had not been exhausted by the issue and return of an execution on a foreign judgment"(p. 523). The court in that case relied upon the three following decisions: —

Claflin *v.* McDermott, 12 Fed. Rep. 375, in which Judge WALLACE says (p. 375): "Actions like the present, in aid of the execution at law, are ancillary to the original suit, and are, in effect, a continuance of the suit at law to obtain the fruit of the judgment or to remove obstacles to its enforcement" (p. 376). "It is therefore difficult to understand how such a suit can be maintained in any court which does not exercise an auxiliary jurisdiction over the court in which the original suit was brought."

Walser *v.* Seligman, 13 Fed. Rep. 415, in which the same judge says (p. 417): "There are numerous cases where creditors have been permitted to resort to equity in the first instance to enforce a statutory liability of stockholders; but these were cases where the statute authorized a direct action, and the question has generally been whether a court of law or of equity was the proper forum. These cases, of course, have no application here."

"Such judgments here are only contract debts, and do not authorize the exercise of auxiliary jurisdiction."

Tarbell *v.* Griggs, 3 Paige, 207, where the decision is based upon a statute of the State of New York, which requires the return of execution unsatisfied before bringing a creditor's bill.

The necessity of a judgment in the same forum by the plaintiff in a creditor's bill is based upon the fundamental principle

that a plaintiff alleging such a ground of equity jurisdiction must show plainly that he has no adequate remedy at law. The fact that he has judgment and an unsatisfied execution in another jurisdiction is no evidence that he has no adequate remedy at law in the jurisdiction where he brings his bill. Such an allegation in some form must be made.

But the plaintiff in error now before this court claims no equity jurisdiction, but brings an action at law under a statute of Kansas which prescribes a particular liability. In Walser *v.* Seligman, *supra*, Judge WALLACE said that this principle of a creditor's bill did not apply to such a case.

A creditor's bill is brought in behalf of all creditors.

Myers *v.* Fenn, 5 Wall. 205.

This action under the Kansas statute belongs to the diligent creditor who first moves against the stockholder. (Record, p. 6.)

The case of Rocky Mountain National Bank *v.* Bliss, 89 N.Y. 338, cited on page 17 of the defendant's brief, is an authority in support of the plaintiff in error. In that case the court was considering a stockholder's liability imposed by the statutes of New York. The decision went on two grounds. Judge RAPPALLO, after stating that a judgment against the corporation and unsatisfied execution was a condition precedent to a suit against the stockholder, says: "The proceeding against the company in Colorado was not a compliance with this condition. It was a proceeding *in rem*, which affected only the property there attached, and the execution issued was only against that specific property." That of itself was a conclusive ground for the decision.

He then uses the language quoted in the defendant's brief (p. 17), and adds what the defendant omitted: "The legal remedies afforded by the courts of this state, where the corpora-

tion was created and is domiciled, are those which the legislature must be deemed to have intended. Such is the construction given to a similar provision in respect to creditor's bills, and although the cases are not precisely the same, we think that they strongly confirm the view that when a statute of this state requires, as a condition precedent to further proceedings in its courts, that an execution against the property shall first have been issued, it means that such execution shall have been issued out of a court of this state of general jurisdiction."

It seems reasonable that the judgment and execution required by paragraph 1192 must be a judgment and execution in the courts of Kansas where the corporation was created and domiciled. In every case where this liability has been enforced, cited on pages 29 and 31 of the plaintiff's brief, it has been upon a judgment against the corporation in the state or federal courts of Kansas.

This very objection has been raised and overruled in the following cases: —

Thompson v. Pfeiffer 56 Pac. Repr. 763 (Kans.)
Ferguson *v.* Sherman, 116 Calif. 169, 174, 176.
McVickar *v.* Jones, 70 Fed. Rep. 754, 760.
Guerney *v.* Moore, 131 Mo. 650, 658.

In Hancock Bank *v.* Ellis, 172 Mass., page 47, Chief Justice Field says: "The present plaintiff has pursued exactly the remedy provided by paragraph 1192 of those statutes. That paragraph permits the plaintiff to proceed by action to charge the stockholders with the amount of the judgment. The courts of Kansas hold that the action must be against the stockholders severally and not jointly."

In an early decision in Missouri, Bagley *v.* Tyler, 43 Mo. Ap. 195–205, the court says: "The words of the statute are: 'If any execution shall have been issued' against the corporation and no property found, then the contingency has arisen whereby the

stockholder may be charged. It is not surely required that the creditor, before resorting to the stockholder's liability, should take a roving execution to go about the country wherever the corporation may have had business, and should, too, go into the courts of other states and secure judgment against the corporation with executions in all and returns of no property found. The stockholder contracted in view of this law, and he agreed that if a judgment should be rendered against the corporation, and execution returned thereon no property found, then he would pay the debt to the extent of his double liability."

That this is the true construction of paragraph 1192 there can be no doubt. In Howells *v.* Manglesdorf, 33 Kan., p. 196, the Supreme Court of Kansas says: "While the proceeding is summary in its character, and its maintenance contingent upon the insolvency of the corporation, or upon the rendition of a judgment against the corporation and the return of an execution thereon of *nulla bona*, yet we cannot regard it as an interlocutory or auxiliary proceeding in the action against the corporation. In the action against the corporation no notice of its pendency is given to the stockholder. He is not directly interested in the action, as his liability is only secondary to the corporation, and exists alone by reason of this statutory provision, and of that provision of the Constitution in pursuance of which the statute is enacted (Const., Art. 12, sect. 2). His liability to the creditors of the corporation is in the nature of a guaranty. The action or proceeding to enforce the same does not accrue until the execution upon the judgment against the principal is returned unsatisfied."

"We think that the proceeding against the stockholder, whatever remedy may be employed, is an independent one."

The present case is not an auxiliary proceeding ancillary to the judicial proceedings in the Federal Court of Kansas. It is an entirely independent proceeding founded upon paragraph 1192 of the Kansas statutes. The reasoning, therefore, which requires a judgment and unsatisfied execution in the same

jurisdiction in order to support a creditor's bill has no application to this statutory liability. The judgment of the United States Circuit Court for the District of Kansas is entitled to the same faith and credit, as evidence, in the court of Rhode Island that it would have in Kansas. Its effect as evidence there is conclusive as proof that the plaintiff is a creditor of the corporation, that it has recovered judgment, issued execution, and found no property, and thus that it has fulfilled the conditions of paragraph 1192 which gave it an independent cause of action against the defendant as an admitted stockholder. There can be no question that the statute was intended to impose a liability in a case like the present. Such is the wellnigh universal interpretation of the statute.

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No. 242. 89

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Supreme Court of the United States
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OCTOBER TERM 1898.

No. 315.

Filed April 17, 1899.

The Hancock National Bank, Plaintiff in Error,

v.

Jonathan B. Farnum.

In Error to the Supreme Court of the State of Rhode Island.

BRIEF FOR DEFENDANT.

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Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 315.

THE HANCOCK NATIONAL BANK, Plaintiff in Error,

v.

JONATHAN B. FARNUM.

In Error to the Supreme Court of the State of Rhode Island.

BRIEF FOR DEFENDANT.

STATEMENT.

This case comes before the court on a writ of error to the Supreme Court of Rhode Island, the assignments of error being, in substance, that the judgment of the Rhode Island court refuses to give full faith and credit to certain public acts, records and judicial proceedings of the State of Kansas.

The case in the Rhode Island Court was an action of assumpsit by a judgment creditor of a Kansas corporation against a Rhode Island stockholder therein, to subject the defendant to a personal liability under a statute of Kansas. The plaintiff in error was the plaintiff below; the case came before the State court on demurrer to the declaration; and the State court sustained the demurrer.

The declaration alleges that by virtue of a statute of Kansas[1], and a provision of the Constitution of that State[2], a creditor who recovers judgment against a corporation, is entitled, after execution thereon has been returned unsatisfied, to proceed by action against any of the stockholders, to charge them, to a certain limited extent, with the amount of the judgment; that the stockholder's liability, as construed by the Kansas court, is a contractual liability, arising on the contract of subscription to the capital stock; that the liability is several; and that an action to enforce the same is transitory, and may be brought in any court of general jurisdiction in the State where personal service can be made upon the stock-

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[1]The statute referred to is Section 1192 of the General Statutes of Kansas, which reads as follows:

1192. If any execution shall have been issued against the property or effects of a corporation, except a railway or religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then execution may be issued against any of the stockholders, to an extent equal in amount to the amount of the stock by him or her owned, together with any amount unpaid thereon; but no execution shall issue against any stockholder, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court, after reasonable notice in writing to the person or persons sought to be charged, and upon such motion such court may order execution to issue accordingly; or the plaintiff in the execution may proceed by action to charge the stockholders with the amount of his judgment.

[2]The provision referred to is Article 12, Section 2, as follows:

SEC. 2. Dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder; and such other means as shall be provided by law; but such individual liability shall not apply to railroad corporations nor corporations for religious or charitable purposes.

holder. The declaration further avers that the plaintiff has recovered judgment, in the Circuit Court of the United States for the District of Kansas, against the Commonwealth Loan and Trust Company, a Kansas corporation, and that execution thereon has been returned unsatisfied; that the defendant is a stockholder in the corporation mentioned; that the Kansas statute, as construed, imposes a liability upon him to the plaintiff; "and that full faith and credit should be given in this State and the courts thereof, to said public acts, records, and judicial proceedings of the State of Kansas, and to the judicial construction of such laws, acts, and records, by the Supreme Court of said Kansas, which is the highest court of said State, as required by Article IV, Section 1, of the Constitution of the United States[1] and by Section 905 of the Revised Statutes of the United States.[2]"

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[1] As follows:

SECTION 1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

[2] As follows:

SEC. 905. The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.

Annexed to the declaration are exhibits, setting out the alleged statute and section of the Constitution of Kansas, and referring to certain decisions in the Supreme Court of that State.

The Rhode Island court, in sustaining the defendant's demurrer to this declaration, held that even if the Kansas statute was regarded by the court in that State as constituting a contract between stockholder and creditor, this opinion would not be a judicial proceeding to which full faith and credit must be given, and would not establish, as a matter of pleading in this declaration, the fact of a contract by the defendant in Kansas by virtue of the statute. The court pointed out that such an opinion would be a decision on general legal principles, and not an interpretation of the statute itself; and observed that "opinions of courts are not judgments, and although a court, in the interpretation of the statutes of its own State, will be followed by other courts, there is no rule of comity or law that a court should be followed when its opinion is given simply upon its interpretation of general legal principles. Still less would an opinion be binding when it is not a decision, but merely a dictum."

Having thus decided that the Constitution and laws of the United States did not compel it to enforce the liability created by the statute in question, the court held, upon the authority of *Sayles* v. *Bates*, 15 R. I., 342, that the liability was not contractual; and upon the authority *O'Reilly* v. *New York etc. R. Co.*, 16 R. I., 388, that the statute imposing it was not enforceable in Rhode Island because not substantially similar to Rhode Island statutory provisions on the same subject.

The court might have added that the Kansas statute is directly opposed to the policy of the law of Rhode Island in an important particular; for while the Rhode Island statute,

(General Laws, R. I., 1896, c. 180, s. 22[1]), expressly provides that the stockholder, when sued for the debt of the corporation, may avail himself of any defence which the corporation might have made in the original action, no such right is reserved to the stockholder under the Kansas statute. The law of Rhode Island on this point was formerly like that of Kansas (See General Statutes, R. I. 1872, c. 142, s. 20[2]). But this statute was expressly repealed by Public Laws, 1877, c. 600, which enacted the present law (see note 1). It may therefore be taken to be the deliberately settled policy of Rhode Island law (in direct opposition to the law of Kansas) that a stockholder shall not be liable on a judgment obtained against the corporation until he has had an opportunity to contest the claim upon which the judgment was founded. And no foreign statute which withholds from the stockholder such opportunity can be enforced in Rhode Island, without contravening the policy of Rhode Island laws.

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[1] As follows:

SEC. 22. All proceedings to enforce the liability of a stockholder for the debts of a corporation shall be either by suit in equity, conducted according to the practice and course of equity, or by an action of debt upon the judgment obtained against such corporation, and in any such suit or action such stockholder may contest the validity of the claim upon which the judgment against such corporation was obtained, upon any ground upon which such corporation could have contested the same in the action in which such judgment was recovered.

[2] As follows:

SEC. 20. Whenever the stockholders of any manufacturing company shall be liable, by the provisions of this chapter, to pay the debts of such company, or any part thereof, their persons and property may be taken therefor on any writ of attachment or execution, issued against the company for such debt, in the same manner as on writs and executions issued against them for their individual debts.

The writ of error contains five formal assignments of error[1], but these may all be embraced under the general proposition that the judgment of the Supreme Court of Rhode Island refuses to give full faith and credit to the public acts, records and judicial proceedings of the State of Kansas.

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[1] As follows:

1. That in said suit there was drawn in question the construction of a statute of the United States, to wit, section 905 of the Revised Statutes of the United States, and the decision was against the title, right, privilege, and immunity of the plaintiff in error specially set up and claimed under such statutes, to wit, said section 905 of the Revised Statutes of the United States.

2. That in said suit there was brought in question the Constitution of the United States, to wit, article 4, section 1, of the Constitution of the United States, and the decision was against the title, right, privilege and immunity of the plaintiff in error specially set up and claimed under the Constitution, to wit, said article 4, section 1, of the Constitution of the United States.

3. That the State Court of Rhode Island decided, against the contention of the plaintiff in error, that it would not give full faith and credit to paragraph 1192 of the General Statutes of the State of Kansas, and to the judicial construction thereof by the highest courts of said State, as required by article 4, section 1, of the Constitution of the United States, and by section 905 of the Revised Statutes of the United States, although their attention was drawn thereto, and thereby defeated the right of the plaintiff in error to enforce by appropriate action, its claim against the said Farnum, as aforesaid.

4. That the Supreme Court of Rhode Island decided, against the contention of the plaintiff in error, that it would not give full faith and credit to the judicial proceedings of the Circuit Court of the United States of America for the district of Kansas, as set forth in the pleadings, as required by article

POINTS OF LAW.

I.

The only question before this court is whether the judgment of the Supreme Court of Rhode Island refuses to give full faith and credit to the public acts, records and judicial proceedings of the State of Kansas.

The general question of the *comity* and *justice* of enforcing or refusing to enforce a stockholder's liability under the statute of another State, is, of course, not open to consideration on this record. Whether, therefore, this court would concur in the State court's view of that question, or whether it has already taken the opposite view; and whether the State court's view is, as Judge Thompson declares (Liability of Stockholders § 86, p. 96), narrow and "tribal," or, on the other hand is, as the Rhode Island court believes, "founded in reason" as well as supported by earlier decisions in that State,—seems to be wholly unimportant here. The only

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4, section 1, of the Constitution of the United States, and by section 905 of the Revised Statutes of the United States, although their attention was drawn thereto, and thereby defeated the right of the plaintiff in error to enforce by appropriate action its claim against said Farnum, as aforesaid.

5. The Supreme Court of the State of Rhode Island erred in the decision rendered in this case in failing to give full faith and credit to the laws and constitution of the State of Kansas which were presented in the pleadings, in failing to give full faith and credit to the judicial construction of such laws by the highest court of the State of Kansas, and in failing to give full faith and credit to the judicial proceedings of the Circuit Court of the United States of America for the district of Kansas, as set forth in the pleadings.

Federal question, and therefore the only question before this court,

Murdock v. *City of Memphis*, 20 Wallace, 590,

is whether the Rhode Island court was under a *constitutional obligation* to enforce this Kansas statute on the facts alleged in the plaintiff's declaration; in other words, whether, in refusing to sustain this declaration, the court refused to give full faith and credit to the public acts, records and judicial proceedings of the State of Kansas.

II.

The judgment of the Supreme Court of Rhode Island does not refuse to give full faith and credit to the judicial proceedings of the State of Kansas.

(*a*) THE REFUSAL OF THE RHODE ISLAND COURT TO FOLLOW THE OPINION OF THE KANSAS COURT AS TO THE NATURE OF THE LIABILITY IMPOSED BY SECTION 1192 OF THE KANSAS STATUTES, IS NOT A REFUSAL TO GIVE FULL FAITH AND CREDIT TO THE JUDICIAL PROCEEDINGS OF KANSAS.

This opinion of the Kansas court, relied upon by the plaintiff and made a part of the declaration in the case at bar, was rendered in a case in which neither the parties here, nor the corporation in which the present defendant is a stockholder, were in any way concerned. Moreover the decision of the case in which it was rendered, did not call for an opinion on the nature of the liability imposed by Section 1192 of the Statutes of Kansas. The case is

Howell v. *Manglesdorf*, 33 Kan., 194.

but the only point it decides is that execution under this statute cannot be ordered against a non-resident stockholder upon a notice served outside the State. The portion of the opinion which the plaintiff in the present case relies upon and claims the Rhode Island court was under a constitutional obligation to follow, was merely a dictum. It reads as follows:

> "While the liability is statutory, it is one which arises upon the contract of subscription to the capital stock of the corporation, and an action to enforce the same is transitory and may be brought in any court of general jurisdiction in the State where personal service can be made upon the stockholder."

In the view of the Rhode Island court, and, it would seem, in the correct view, this dictum is not an interpretation of the statute, but a decision on general legal principles, so that the question here presented is whether the court of one State is under a constitutional obligation to follow a dictum of a court of another State, intimating the latter's view in regard to a general legal principle. Reference to a reported decision on such a question would almost seem to call for an apology, especially where the decision referred to is not by this court. The following language of the Circuit Court of the United States for the Eastern District of Missouri is, however, so apposite that it may be not out of place to quote it here.

> "It (Article IV, Section 1, of the Constitution of the United States) relates only to the conclusiveness of such judgments as between the parties to them and their privies. It does not require that judgments in one State shall be followed by the courts of other States as matter of authority in other similar cases. The Constitution does not deal with the question of the effect of such judgments as precedents, nor with the opinions of the courts rendering them. It does not require the courts of one State to follow those of another upon any question whether upon the construction of local statutes or otherwise.

> There may, it is true, be cases in which a State law or decision has entered into and become part of a contract in such a way that a change of the law or a reversal of the decision would impair its obligation, but in those cases the federal question would arise, under a different provision of the Constitution. The duty of the courts of one State to follow those of another upon questions arising upon the construction of the statutes of the latter, is a duty resting alone upon comity and not one imposed by the federal Constitution."—*Per* McCrary, C. J., *Wiggins Ferry Co.* v. *Chicago etc. R. Co.*, 11 Fed. Rep., 381, 383, 384; affirmed, *Chicago etc. R. Co.* v. *Wiggins Ferry Co.*, 119 U. S., 615.

(b) THE REFUSAL OF THE RHODE ISLAND COURT TO GIVE A KANSAS JUDGMENT AGAINST A CORPORATION, THE EFFECT OF SUPPORTING AN ACTION THEREON AGAINST A RHODE ISLAND STOCKHOLDER, IS NOT A REFUSAL TO GIVE FULL FAITH AND CREDIT TO THE JUDICIAL PROCEEDINGS OF KANSAS.

It is, no doubt, elementary that under Section 905 of the Revised Statutes of the United States, a judgment is to have, as to parties and privies, not only full faith and credit, but the same force and effect in the courts of every State which it has in the State where it was recovered. And it also seems to be well settled that stockholders in a corporation are so far privy to all proceedings against the corporation as to be bound by a judgment against it, that is to say, precluded from re-examining the merits of the claim on which the judgment was recovered.

2 Morawetz, Corporations, § 886.

Dexter v. *Edmands*, 89 Fed. Rep., 467, 471.

Hawkins v. *Glenn*, 131 U. S., 319, 329, 332.

Unless, however, the rule that a judgment is to have the same effect which it has at home, means the same effect for all purposes, the Rhode Island court was evidently not compelled by virtue of it, to give this Kansas judgment the effect of supporting an action thereon against a Rhode Island stockholder, although the judgment might have that effect in Kansas as against a Kansas stockholder.

That the rule has no such unrestricted meaning, has, of course, long been settled. It is only *as evidence*, and not for all purposes, that judgments of a court of another State are to have the same effect which they have at home.

Story, Conflict of Laws, § 609.
M'Elmoyle v. *Cohen*, 13 Peters, 312, 325, 326.
Thompson v. *Whitman*, 18 Wallace, 457, 462, 463.
Wisconsin v. *Pelican Insurance Co.*, 127 U. S., 265, 291.
Huntington v. *Attrill*, 146 U. S., 657, 685.

Accordingly "no execution can issue upon such judgments without a new suit in the tribunals of other States. And they enjoy not the right of priority or lien which they have in the State where they are pronounced, but that only which the *lex fori* gives to them by its own laws in their character of foreign judgments."

Story, Conflict of Laws, § 609.
Thompson v. *Whitman*, 18 Wallace, 457, 462, 463.
Wisconsin v. *Pelican Insurance Co.*, 127 U. S., 265, 291, 292.

And similarly, a judgment against a corporation in another State does not have the effect of supporting a bill in equity against stockholders to compel payment of their stock

subscriptions, although it would have that effect in the State where recovered.

National Tube Works v. *Ballou*, 146 U. S., 517.

It is hardly open to doubt, therefore, that such a judgment does not have the same effect which it has at home to the extent of compelling the court of another State, as a matter of constitutional obligation, to enforce it against a stockholder. The authorities above cited are quite sufficient to show that the Constitution and laws of the United States imposed no other obligation upon the Rhode Island court in regard to the judgment in the case at bar, than to treat it as conclusive evidence that the corporation was indebted to the plaintiff,—a point which was, of course, not disputed by the defendant. It would seem, therefore, that the judgment of the Rhode Island court does not refuse full faith and credit to the *judicial proceedings* of Kansas.

III.

The judgment of the Supreme Court of Rhode Island does not refuse to give full faith and credit to the public acts of the State of Kansas.

(*a*) IF THE KANSAS STATUTE, SET OUT IN THE DECLARATION, WAS INTENDED TO IMPOSE A LIABILITY IN A CASE LIKE THE PRESENT, THE REFUSAL OF THE RHODE ISLAND COURT TO ENFORCE IT, IS NOT A REFUSAL TO GIVE FULL FAITH AND CREDIT TO THE PUBLIC ACTS OF KANSAS.

In

Chicago etc. R. Co. v. *Wiggins Ferry Co.*, 119 U. S., 615,

this court, Mr. Chief Justice Waite delivering the opinion, said (page 622):

> "Without doubt the constitutional requirement, Art. IV, § 1, that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state, implies that the public acts of every state shall be given the same effect by the courts of another state that they have by law and usage at home."

Unless this means that the courts of one State must enforce the statutes of another, it plainly does not show that the Rhode Island court violated a constitutional obligation in refusing to enforce the Kansas statute declared on in the case at bar. It cannot be seriously contended that the words quoted have any such meaning. "These provisions of the Constitution and laws of the United States are necessarily to be read in the light of some established principles which they were not intended to overthrow."

Huntington v. *Attrill*, 146 U. S., 657, 685.

It has always been taken for granted that one of these established principles is the fundamental one that the statutes of a State operate extra-territorially only by the express or tacit consent of the courts in which they are sought to be enforced; and that accordingly, as the constitutional provision in question does not put the *judgments* of other States upon the footing of domestic judgments to be enforced by execution, so neither does it put the *statutes* of other States on the footing of domestic statutes which the courts must enforce as a matter of constitutional obligation. Accordingly, the cases in which

statutes like that in the case at bar, have been held unenforceable in the courts of another State, all negative by implication the existence of any constitutional obligation to enforce them. See for example:

New Haven Horse Nail Co. v. *Linden Spring Co.*, 142 Mass., 349, 353.
Post v. *Toledo etc. R. Co.*, 144 Mass., 341, 345.
Bank of North America v. *Rindge*, 154 Mass., 203.
Marshall v. *Sherman*, 148 N. Y., 9.
Fowler v. *Lampson*, 146 Ill., 472.

And among the cases where the statute here in question has been enforced in other States, none has been found in which it seems to have occured to any one that the court was not at perfect liberty to decline the jurisdiction if it saw fit to do so. The enforcement is always treated as depending upon the consent of the court and never as being a matter of constitutional obligation. See for example:

Bank of North America v. *Rindge*, 57 Fed. Rep., 279.
Rhodes v. *U. S. National Bank*, 66 Fed. Rep., 512.
M'Vickar v. *Jones*, 70 Fed. Rep., 754.
Whitman v. *National Bank*, 83 Fed. Rep., 288.
Hancock National Bank v. *Ellis*, 166 Mass., 414.

And the point has been explicitly passed upon.

Thus in

Dexter v. *Edmands*, 89 Fed. Rep., 467,

a suit in the Federal Court for the District of Massachusetts, to enforce this same statute of Kansas, Lowell, District Judge, said (pages 469, 470):

> "The laws of one sovereignty have not the force of laws, properly speaking, outside the limits of that

> sovereignty, and the rights arising by virtue of those laws are not enforceable in a court foreign to that sovereignty except through what is known as the comity of nations. . . . . The state of Massachusetts is, for the purpose of this discussion, undoubtedly a sovereignty foreign to Kansas. The courts of Massachusetts can, if they see fit, determine that this statute of Kansas is contrary to the public policy of Massachusetts and injurious to its citizens. That the courts of Massachusetts can refuse to enforce obligations arising under this statute is undoubted."

And in

Huntington v. *Attrill*, 146 U. S., 657.

Mr. Justice Gray, delivering the opinion of this court, said (page 683):

> "If a suit on the original liability under the statute of one State is brought in a court of another State, the Constitution and laws of the United States have not authorized its decision upon such a question to be reviewed by this court. . . . . But if the original liability has passed into judgment in one State, the courts of another State, when asked to enforce it, are bound by the Constitution and laws of the United States to give full faith and credit to that judgment, and if they do not, their decision, as said at the outset of this opinion, may be reviewed and reversed by this court on writ of error. The essential nature and real foundation of a cause of action, indeed, are not changed by recovering judgment upon it. This was directly adjudged in *Wisconsin v. Pelican Ins. Co.*, above cited. The difference is only in the appellate jurisdiction of this court in the one case or in the other."

Plainly, the only question which this leaves to be considered, is whether the suit in the case at bar is a suit on the original liability under the statute of Kansas. That it is such, seems not open to question. The judgment against the cor-

poration does not operate to make the liability of the stockholder anything else than an original liability. It is simply a necessary condition precedent to the existence of any liability on his part under this statute. The case at bar is, therefore, not a case where the original liability under the statute of another State has passed into judgment in that State, and consequently is not a case where the Constitution and laws of the United States have authorized the decision of the State court to be reviewed by this court.

(b) THE KANSAS STATUTE WAS NOT INTENDED TO IMPOSE A LIABILITY IN A CASE LIKE THE PRESENT.

This point was brought to the attention of the State court, but in the view there taken of other questions in the case, it became unnecessary to decide it. It will, however, become material in this court in case the preceding point is decided adversely to the defendant's claim; for clearly the State court did not violate a constitutional obligation in refusing to hold the defendant liable, if the statute was not intended to impose a liability in a case like the present. It therefore seems necessary to consider the point here.

The declaration alleges the recovery of judgment in Kansas against the corporation in which the defendant is a stockholder, and the return of execution unsatisfied thereon, but does not allege the recovery of judgment against the corporation in Rhode Island or that it is impossible to recover it. The question is whether such an allegation is requisite, for if it is, the case is not within the statute.

It is submitted that such an allegation is requisite. The intention of the legislature was to require the creditor to exhaust his remedy against the corporation before proceeding

against the stockholder, as appears from the provision that the stockholder may be charged only after no corporate property can be found whereon to levy execution, and this intention could be wholly defeated unless judgment and execution in the State where the stockholder was sued was required. See, upon this point, the remarks of Folger. J., in

Rocky Mountain National Bank v. *Bliss*, 89 N.Y., 342 :

> " We think the statute requires the recovery of a judgment and issue of an execution *in this State.* In requiring the creditor to exhaust his legal remedies against the corporation before resorting to the personal liability of the stockholders, the statute could not have contemplated that the recovery of a judgment and issue of an execution against the company in any State of the Union should be a compliance with the condition."

And see also,

Marshall v. *Sherman*, 148 N. Y., 9,

where the court applied this principle to the same statute declared on in the case at bar :—

> " There are numerous other decisions in the State and Federal courts that hold in effect either that such a liability cannot be enforced at all beyond the local jurisdiction, or that such an action must be in equity after all remedies against the corporation have been exhausted, and that too *in the State where the stockholder is sought to be charged*, or at least the bill must show upon its face, by proper allegations, that such a proceeding was impossible, and that all the corporate assets had been applied to the payment of the claim of creditors."—*Per* O'Brien, J., page 27.

This construction of the statute is not in conflict with the dictum in

Howell v. *Manglesdorf*, 33 Kan., 194,

relied upon by the plaintiff. It will be remembered that this dictum reads as follows:

> "While the liability is statutory, it is one which arises on the contract of subscription to the capital stock of the corporation, and an action to enforce the same is transitory, and may be brought in any court of general jurisdiction in the State where personal service can be made upon the stockholder."

Even according to this dictum, the action must be brought under the statute, and a creditor who is not within the statute cannot avail himself of it. The question whether a creditor who has recovered judgment against the corporation in another State, is within the statute, was not touched upon by the court. The meaning of the dictum is merely that a creditor who is within the statute may bring an action wherever personal service upon the stockholder can be made, and the authorities above cited show that a creditor at large in Rhode Island is not within the statute any more than a creditor at large in Kansas.

The concluding averment of the declaration that the "said statute of the State of Kansas, as construed in the highest court of said State, as set forth, imposes a liability upon said defendant to the plaintiff, as above set forth," is, of course, not admitted by the demurrer.

Pearsoll v. *Dwight*, 2 Mass., 84.
Holmes v. *Broughton*, 10 Wendell, 75.
Bank v. *Hendrickson*, 40 N. J. Law, 52.

The result is, therefore, that even if the Constitution of the United States requires the Rhode Island court to enforce the statute in every case where the Kansas court would enforce it, there is nothing in this record to show that the Rhode Island court has refused to do so.

IV.

The judgment of the Supreme Court of Rhode Island should be affirmed.

Respectfully submitted,

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Statement of the Case.

HANCOCK NATIONAL BANK *v.* FARNUM.

ERROR TO THE SUPREME COURT OF THE STATE OF RHODE ISLAND.

No. 89. Argued December 21, 1899. — Decided March 12, 1900.

A plaintiff, after the recovery of a judgment against a Kansas corporation in the courts of Kansas, and the return of an execution unsatisfied, can maintain an action in any court of competent jurisdiction against a stockholder of the corporation to recover in satisfaction of his judgment an amount not exceeding the par value of the defendant's stock. *Whitman* v. *Oxford National Bank*, *ante*, 563, followed to this point.

The action of the Supreme Court of Rhode Island in failing to recognize such right in the plaintiff in error can be revised by proceeding in error in this court.

The judgment rendered in the Kansas court is in that State conclusive against the corporation, as well as binding upon the stockholder, and, under the Constitution and laws of the United States it should have the like force and effect in other States when attempted to be enforced in their courts.

THE facts of this case are these: The plaintiff in error, plaintiff below, a creditor of the Commonwealth Loan & Trust Company, a corporation duly organized under the laws of the State of Kansas, recovered a judgment on December 8, 1893, in the Circuit Court of the United States for the District of Kansas against the corporation for the sum of $16,136.76, debt, and $28.45 costs of suit. Thereafter, on April 27, 1894, an execution was issued on the judgment, and after due search and diligence no property of the corporation could be found to be taken in satisfaction thereof, and it was returned wholly unsatisfied. The corporation was not a railway, religious or charitable corporation. The defendant is a stockholder in that corporation, holding ten shares of the capital stock of the par value of $100 each, and appearing as such stockholder on the books of the corporation. Setting forth these facts with further detail of the provisions of the Kansas constitution and statutes, the plaintiff filed its declaration in the Common Pleas Division of the Supreme Court of Rhode Island to recover a judgment for a sum equal to the amount of defendant's stock. To this declaration a demurrer was filed

and sustained and judgment entered for the defendant, 20 R. I. 466, to reverse which judgment the plaintiff sued out this writ of error.

Mr. William Reed Bigelow for plaintiff in error. *Mr. H. J. Jaquith*, *Mr. William J. Cronin* and *Mr. John E. Conley* were on his brief.

Mr. Walter F. Angell for defendant in error. *Mr. Stephen O. Edwards*, *Mr. Seeber Edwards* and *Mr. Albert Gerald* were on his brief.

Mr. Justice Brewer, after making the above statement, delivered the opinion of the court.

This case brings to our consideration the same constitutional and statutory provisions of the State of Kansas which were before us in *Whitman* v. *Oxford National Bank*, *ante*, 563. In that case we decided that a plaintiff, after the recovery of a judgment against a Kansas corporation in the courts of Kansas, and the return of an execution unsatisfied, could maintain an action in any court of competent jurisdiction against a stockholder of the corporation to recover in satisfaction of his judgment an amount not exceeding the par value of the defendant's stock. It is unnecessary to rediscuss the questions there considered.

It remains to be determined whether the action of the Supreme Court of Rhode Island in failing to recognize the right which, in the case just referred to, we have held that the plaintiff possessed, is one which can be revised by this proceeding in error. In order to give this court jurisdiction of a case decided in the courts of a State there must be some question arising under the Constitution of the United States; some alleged denial of a right or immunity secured by that Constitution. The plaintiff says that the decision of the Supreme Court of Rhode Island denied it a right given by section 1, article 4, of the Constitution of the United States, which reads: "Full faith and credit shall be given in each

State to the public acts, records and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof," and the following statute passed in pursuance thereof, to wit, Revised Statutes, section 905:

"The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

The plaintiff's contention that these Federal provisions required a decision different from that made by the state court was distinctly presented and ruled against. The jurisdiction, therefore, of this court, is clear. It may examine and inquire whether any right secured by these provisions was denied by the state court, though if it finds that no such right was denied, the judgment will have to be affirmed, no matter what may be the opinion of this court as to the correctness of the ruling as a question of general law.

The Constitution declares that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and that Congress may not only prescribe the mode of authentication but also the effect thereof. Section 905 prescribes such mode, and adds that the "records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken." Such is the Congressional decla-

ration of the effect to be given to the records and judicial proceedings of one State in the courts of every other State. In other words, the local effect must be recognized everywhere through the United States.

What then is the faith and credit given by law or usage in the courts of Kansas to a judgment against a corporation? What is the effect of such a judgment as there established? This is a question not answered by referring to general principles of law, by determining what at common law was the significance and effect of a judgment, but can be answered only by an examination of the decisions of the courts of Kansas. The law and usage in Kansas, prescribed by its legislature and enforced in its courts, make such a judgment not only conclusive as to the liability of the corporation, but also an adjudication binding each stockholder therein. We do not mean that it is conclusive as against any individual sued as a stockholder that he is one, or if one, that he has not already discharged by payment to some other creditor of the corporation the full measure of his liability, or that he has not claims against the corporation, or judgments against it, which he may, in law or equity, as any debtor, whether by judgment or otherwise, set off against a claim or judgment, but in other respects it is an adjudication binding him. He is so far a part of the corporation that he is represented by it in the action against it. *Ball* v. *Reese*, 58 Kansas, 614. In that case it was said, correcting an inference which was sought to be drawn from language in the case of *Howell* v. *Manglesdorf*, 33 Kansas, 194, in respect to the effect of a judgment against a corporation (pp. 617, 618):

"The general holding in this court has been that a judgment is final and conclusive between the parties and their privies; and we think it must be held that every stockholder in a corporation is so far privy in interest in an action against the corporation that he is bound by the judgment against it. In the absence of fraud and collusion, the judgment must be held to be final and conclusive against the stockholder if the court rendering it has final jurisdiction. As the judgment was valid, the court committed error in allowing the defendant to go

behind it and contest matters which were conclusively settled by the judgment against the corporation."

This representative character of the corporation has been affirmed by this court in several cases. In *Hawkins* v. *Glenn*, 131 U. S. 319, it was held that "in the absence of fraud, stockholders are bound by a decree against their corporation in respect to corporate matters, and such a decree is not open to collateral attack." This was a case in which an assessment ordered by a court which had jurisdiction of the corporation was held binding upon stockholders residing in another State; and in the opinion, on page 329, it was said by Chief Justice Fuller:

"A stockholder is so far an integral part of the corporation that, in the view of the law, he is privy to the proceedings touching the body of which he is a member."

See also *Glenn* v. *Liggett*, 135 U. S. 533; *Great Western Telegraph Co.* v. *Purdy*, 162 U. S. 329, 337.

Now, as the judgment rendered in the Kansas court is in that State not only conclusive against the corporation but also binding upon the stockholder, it must, in order to have the same force and effect in other States of the Union, be adjudged in their courts to be binding upon him, and the only defences which he can make against it are those which he could make in the courts of Kansas. The question to be determined in this case was not what credit and effect are given in an action against a stockholder in the courts of Rhode Island to a judgment in those courts against the corporation of which he is a stockholder, but what credit and effect are given in the courts of Kansas in a like action to a similar judgment there rendered. Thus and thus only can the full faith and credit prescribed by the Constitution of the United States and the act of Congress be secured.

In *Crapo* v. *Kelly*, 16 Wall. 610, 619, referring to the statute of Congress respecting the authentication of records, it was said:

"Under this statute it has been held in this court, from an early day, that the faith and credit spoken of are not limited to the form of the record, and are not satisfied by its admission

as a record. It is held that the same effect is to be given to the record in the courts of the State where produced, as in the courts of the State from which it is taken."

The fact that this judgment was rendered in a court of the United States, sitting within the State of Kansas, instead of one of the state courts, is immaterial; for, as said in *Crescent Live Stock Co.* v. *Butchers' Union*, 120 U. S. 141, 147, citing *Dupasseur* v. *Rochereau*, 21 Wall. 130, 135; *Embry* v. *Palmer*, 107 U. S. 3:

"It may be conceded, then, that the judgments and decrees of the Circuit Court of the United States, sitting in a particular State, in the courts of that State, are to be accorded such effect, and such effect only, as would be accorded in similar circumstances to the judgments and decrees of a state tribunal of equal authority."

See also *Metcalf* v. *Watertown*, 153 U. S. 671–676; *Pittsburgh, Cincinnati &c. Railway* v. *Long Island Loan & Trust Co.*, 172 U. S. 493.

We are of the opinion, therefore, that the Supreme Court of Rhode Island has failed to give to the judgment in the Circuit Court of the United States for the District of Kansas that force and effect which it has within the limits of the State of Kansas, and that the failure so to do is an error available in this court.

The judgment of the Supreme Court of Rhode Island must, therefore, be reversed, and the case remanded for further proceedings not inconsistent with the views herein expressed.

MR. JUSTICE PECKHAM dissented.